TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 258.

AMANDA S. WHITFIELD AND THE STATE OF MISSOURI AT THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, PETITIONERS,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 17, 1906.
CERTIORARI AND RETURN FILED MAY 7, 1906.

(20,203.)

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1 UNITED STATES OF AMERICA, *sct:*

To Aetna Life Insurance Company of Hartford, Connecticut, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein Amanda M. S. Whitfield is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jno. F. Philips, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 25th day of November, in the year of our Lord one thousand nine hundred and three.

JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

We hereby acknowledge due service of the within Citation this 25th day of November A. D. 1903.

JONES, JONES & HOCKER,
BOYLE, GUTHRIE, HURT & DAVISON,
Attorneys for Defendant in Error.

2698. United States Circuit Court. Western District of Missouri, Western Division. Amanda M. S. Whitfield *vs.* Aetna Life Ins. Co. Citation. Filed Nov. 25, 1903. Adelaide Utter, Clerk.

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the November Term, 1903, thereof, between Amanda M. S. Whitfield as plaintiff, and Aetna Life Insurance Company of
2 Hartford, Connecticut, a manifest error hath happened, to the great damage of the said plaintiff Amanda M. S. Whitfield as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record

and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the first Monday in December, 1903, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 25th day of November, in the year of our Lord one thousand nine hundred and three.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Allowed by
JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of said Circuit Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 3rd day of December, A. D. 1903.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

2698. United States Circuit Court. Western District of Missouri. Western Division. Amanda M. S. Whitfield *vs.* Aetna Life Ins. Co. Writ of Error. Filed Nov. 25, 1903. Adelaide Utter, Clerk.

3 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore, to-wit, on the 6th day of October, 1902, there was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, a petition in a case wherein Amanda M. S. Whitfield is plaintiff and Aetna Life Insurance Company is defendant.

Said petition is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Petition.

Plaintiff, Amanda M. S. Whitfield, a citizen and resident of the Western District of Missouri, brings this, her action against the Aetna Life Insurance Company, a corporation organized and existing under the laws of Connecticut, with its chief office therein, the matter and amount in dispute herein exceeding exclusive of interest and costs, the sum or value of two thousand dollars ($2,000.00), and thereupon the plaintiff avers:

1. Defendant is a corporation organized and existing under the laws of the State of Connecticut, engaged in the life and accident insurance business, is now and was at all the times hereinafter named qualified to do business in this state, having fully complied with the laws thereof and obtained and held a certificate and license to do business therein.

2. In consideration of the payment to it of the premium therein named, the defendant did on November 3rd, 1900, issue, execute and deliver to James Whitfield, at Kansas City, Missouri, a policy of insurance in words and figures as follows:

"Twentieth Century Combination.

Principal sum $5000.00. Accident Policy. Premium $6.25.

The Aetna Life Insurance Company, of Hartford, Conn.

In consideration of the warranties made in the application for this insurance and of the sum of six 25/100 dollars, does hereby insure James Whitfield of the town of Kansas City, County of Jackson, State of Missouri, under Classification Preferred, being a Sporting Editor K. C. Star by occupation, for the term of 3 months from the 29th day of Nov. 1900, (commencing and ending at
4 twelve o'clock, noon, standard time, in the sum of twenty-five no/100 dollars per week indemnity against loss of time resulting from bodily injuries effected, during the term of this insurance, through External Violence, and Accidental Means, which shall, independently of all other causes, immediately, continuously and wholly disable him from prosecuting any and every kind of business pertaining to his occupation, above stated; or if such injuries shall not wholly disable the Insured, as above, but shall immediately, continuously, and wholly disable him from the performance of one or more important daily duties pertaining to his occupation, or if, following a period of total disability resulting from such injuries,

he shall be in like manner partially disabled, the Company will pay two-fifths of the weekly indemnity herein provided for total disability for the period of such partial disability, but not for more than twenty-six consecutive weeks of partial disability, nor will payments be made for total disability or total and partial disability combined exceeding in amount the principal sum insured by this policy as stated in clause '*e*.'

Claims for weekly indemnity of less than two months' duration shall be payable upon presentation of satisfactory affirmative proof of total or partial disability and that same was the proximate result of external, violent and accidental means within the conditions of this policy; claims of longer duration shall be payable at the expiration of two months from date of accident and at intervals of two months thereafter, such affirmative proof of disability and of its continuance being furnished before each payment, final proof in all cases to be furnished in accordance with condition six.

a. If such injuries alone result within ninety days in loss by removal of Both Hands at or above the wrists, or Both Feet at or above the ankles, or One Hand and One Foot at those places, or the irrecoverable loss of the entire sight of both eyes, then the insured shall be paid the Full Principal Sum, insured in lieu of weekly indemnity as herein provided, and this policy shall thereupon cease and be surrendered to the Company.

b. If such injuries alone result within ninety days in loss by removal of right hand at or above the wrist, or either leg at or above the knee, the Insured shall be paid one-half the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the Company.

c. If such injuries alone result within ninety days in loss by removal of the Left Hand at or above the wrist, or either foot at or above the ankle, the insured shall be paid one-fifth of the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the Company.

d. If such injuries alone result within ninety days in the irrecoverable loss of the entire sight of one eye, the insured shall be paid one-eighth the principal sum insured in lieu of weekly indemnity as herein provided.

e. If death results solely from such injuries within ninety days, the said Company will pay the principal sum of five thousand no/100 dollars to Amanda M. S. Whitfield, his wife, if living; and in event of the death of the said beneficiary before the death of the Insured, to the executors, administrators, or assigns of the insured.

f. If injuries are sustained by means as aforesaid, (1) while the insured is riding as a passenger in or on any public passenger conveyance, using steam, compressed air, gasoline, cable or electricity as a motive power, or (2) while riding in a regular passenger elevator, or (3) while riding a bicycle (not in a race for prize or purse, concerning which risk, see condition two) or (4) in consequence of the burning of a building in which the Insured shall be at the commencement of the fire, the amount to be paid shall be double the sum

specified in the clause under which claim is made, subject to all the conditions of this policy.

This Policy is issued and accepted subject to the following conditions:

1. There shall be no insurance under this policy or any renewal hereof unless the premium is actually paid prior to any accident by reason of which claim is made. The Company reserves the right to cancel this policy at any time, by refunding to the insured the amount of said premium, less, a pro rata share for the time the policy has been in force.

2. If the Insured is injured in any occupation or exposure classed by this Company higher than the premium paid for this policy covers, the principal sum insured and weekly indemnity shall be only such amounts as said premium will purchase at the rate fixed for such increased hazard. If accidentally injured while riding a bicycle in a race for prize or purse, the amounts payable will be one-third of the double benefits provided by clause '*f*' hereof.

3. This insurance does not cover disappearance; nor the result, fatal, or otherwise, of injuries of which there is no visible mark upon the body (except as hereinafter provided); nor in event of accident or death, loss of limb or sight, or disability resulting wholly or partly, directly or indirectly, from bodily or mental infirmity,
6 or disease in any form; nor does it cover injuries, fatal or otherwise, resulting from fits, vertigo, somnambulism, medical or surgical treatment, war, duelling, or violating law; nor does it cover (except as incident to the occupation of railway employés) entering or trying to enter or leave a moving conveyance using steam or electricity as a motive power (except cable and electric street cars), being in any place in or on any such conveyance which has not been provided for the occupation of passengers during transit, or walking or being on any railroad bridge or roadbed, except at established crossings of such roads with public highways. Clause '*f*' above shall not apply to accidents happening while the Insured is boarding or alighting from a street car.

4. In event of death, loss of limb or sight, or disability due to sunstroke of freezing; or due to unnecessary exposure to obvious risk of injury or obvious danger; or due to contact with poisonous substances other than to the septic poisoning of wounds accidentally inflicted; or due to hernia, the result of an accident happening subsequent to the issue of this policy; or in event of death following bodily injuries of which there existed no external or visible mark upon the body of contusion or wound sufficient to cause death (accidental drowning only excepted) and an autopsy showed that such injuries contributed materially to the death of the Insured, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-fifth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

5. In event of death, loss of limb or sight, or disability due to injuries intentionally inflicted upon the Insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the

influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries intentionally inflicted upon the Insured by himself; or due to suicide, sane or insane; or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influence of intoxicants or narcotics, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-tenth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

6. Immediate notice in writing of any accident or injury on account of which claim is to be made shall be given said Company at Hartford, Conn., with full particulars and full name and address of the Insured; and unless affirmative proof of death, loss of limb or sight, or duration of total or partial disability, and that the
7 same was the proximate result of external, violent and accidental means, is so furnished within five months as to death, loss of limb or sight, from the happening of such accident, or within two months from the termination of total or partial disability, or in case of claim for the full limit, final claim be made within two months from the termination of such limit, the Company shall be released from all liability for the payment of any claim based thereon. No legal proceedings shall be brought to recover any sum hereby insured within ninety days after receipt of proof at Hartford, nor at all, unless commenced within one year from date of the alleged accident as to death, loss of limb or sight, or within six months from the filing of claim with the Company as to total or partial disabiliy.

7. No claim against this Company under accident policies shall be valid in excess of ten thousand dollars (or twenty thousand dollars under clause '*f*' above) or fifty dollars weekly indemnity (or one hundred dollars weekly indemnity under clause '*f*' above), nor for weekly indemnity in excess of the average weekly earnings of the Insured. If the insured has insurance for weekly indemnity in excess of his average weekly earnings, this Company's liability for weekly indemnity shall not exceed its pro rata share of the average weekly earnings of the insured. The weekly indemnity for partial disability shall not [exceed] two-fifths of the liability of the Company for weekly indemnity for total disability under this condition. All premiums paid this Company for insurance in excess of such liability shall be returned, upon demand, to the Insured or his legal representatives.

8. The maximum liability of the Company hereunder in any policy year shall not exceed the principal sum hereby insured, and in no event will claim for weekly indemnity be valid if claim is also made for any of the stated amounts herein provided for specified injuries based upon he same accident and resulting injuries.

9. All claims under this policy shall be subject to proof of interest. A copy of any assignment shall be given to the Company within thirty days. The Company will assume no responsibility for the validity of assignments.

10. Any medical examiner of the Company shall be allowed, as

often as he requires, to examine the person or body of the insured, in respect to alleged injury or cause of death. In case of autopsy being held the Company shall have due notice and opportunity for its medical examiner to be present and participate therein.

11. This insurance does not cover injuries received in wild, uninhabited or uncivilized regions, nor in any part of North
8 America, lying north of the fifty-fifth degree of north latitude, nor in Europe and Asia north of the sixtieth degree of north latitude.

12. No agent has authority to waive or change any condition or provision of this policy, nor shall it be claimed that the Company or agent has knowledge of any risk or exposure which is not set forth in the application herefor; and no waiver or change nor the issue of any permit will be valid unless in writing, signed by either the President, Vice-President, Secretary or Assistant Secretary of the Company.

13. The insured on the acceptance of this policy, makes the following statements, which he warrants to be true.

I have no other insurance in this Company, and no other accident insurance in any company or association, and have made no application for accident insurance upon which I have not been notified of the action thereon, except as herein stated. No application made by me for accident insurance has ever been declined, and no accident policy issued to me has ever been canceled by this or any other company or association, except as herein stated.

I have not in contemplation any special journey, nor any hazardous undertaking not required by my occupation as above described, except as herein stated.

My hearing or vision is not impaired, I have never had, nor am I subject to, fits, diseases of the brain, bodily or mental infirmity, except as herein stated.

In Witness Whereof, The Aetna Life Insurance Co., has caused these presents to be signed by its President and Secretary, but the same shall not be binding unless countersigned by Drennon & Mastin, General Agents, at Kansas City, Mo.

M. G. BULKELEY, *President.*

J. L. ENGLISH, *Secretary.*

Countersigned at Kansas City, Mo., this 3rd day of Nov. 1900.

DRENNON & MASTIN,
General Agents.

Said policy was from time to time and continuously renewed by the payment of quarterly premiums in advance, so that the same was in full force and effect at the time of his death.

3. On April 7th, 1902, while said policy was in force, at Kansas City, Missouri, James Whitfield died from bodily injuries effected through external, violent and accidental means and by a pistol shot.

9 4. Plaintiff Amanda M. S. Whitfield, was at the time of the issuance of said policy and of his death the wife of said James Whitfield and is now his widow.

5. Immediately upon the accident to and death of James Whitfield, the said Amanda M. S. Whitfield gave notice in writing to defendant at Hartford, Connecticut, with full particulars and full name and address of the assured and demanded payment of the amount of the policy, and at the request of defendant afterwards, on May 3rd, 1902, gave a more detailed proof, and the defendant made its own investigation and waived any further proof, offering to pay plaintiff the sum of five hundred dollars as the full amount due by virtue of Section 5 of the policy but then and thereafter refused to pay any further sum, although it was demanded.

Wherefore plaintiff demands judgment for $5000 with six per cent. interest from April 7th, 1902, and costs.

A. F. SMITH,
FRANK HAGERMAN,
Attorneys for Plaintiff.

STATE OF MISSOURI, *County of Jackson, ss:*

I, A. F. Smith, on oath say: I am one of the attorneys for plaintiff; a true copy of the policy of insurance sued upon is set forth in the foregoing petition.

A. F. SMITH.

Subscribed and sworn to before me this 6th day of October 1902.
[SEAL.] OSCAR HOCHLAND,
Notary Public Within and for Jackson County, Missouri.

My commission expires September 4th, 1904.

Thereupon a writ of summons was issued in the above entitled case, which writ with the return of the Marshal thereon indorsed was returned into court and filed on the 11th day of October, 1902, and is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, ss:

The President of the United States of America to the Marshal of the United States for the Western District of Missouri, Greeting:

You are hereby commanded to summon Aetna Life Insurance Company of Hartford, Connecticut, doing business in the state of Missouri, and the Western Division of the Western District thereof, to be and appear before the Honorable Circuit Court of the United States, in and for the Western Division of the Western District of Missouri, on the first day of the next term thereof, to be begun and holden at Kansas City, in said District, on the first Monday, the 3rd day of November next; then and there to answer to complaint of Amanda M. S. Whitfield, a citizen of the state of Missouri, as set forth in the petition filed in the office of the clerk of said court, on the 6th day of October A. D. one thousand nine hundred and two.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States the 7th day of October, A. D. nineteen hundred and two.

Issued at office, in Kansas City, in said District, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.] ADELAIDE UTTER, *Clerk.*

WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby certify that I served the within Writ by delivering a true copy thereof, together with a true copy of the petition in the cause to Thomas H. Mastin, Jr., General Agent of the within named Aetna Life Insurance Company (Accident Department) at the offices of said Company in Kansas City, Jackson County, Missouri, this 7th day of October, 1902, the President [ot] other chief officer of said Company being not found in my district.

All done in the Western Division of the Western District of Missouri, as aforesaid.

E. R. DURHAM,
United States Marshal,
By J. E. MORRISON, *Deputy.*

Thereafter, to-wit, on the 16th day of October, 1902, said writ of summons was refiled with the following additional return of the Marshal indorsed hereon:

CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I hereby certify that I served the within writ by delivering a true copy thereof, together with a true copy of the petition in said cause to Ed. E. Yates, Insurance Commissioner of the state of Mis-
11 souri at his office in the city of Jefferson, in the county of Cole and State of Missouri, on the 15th day of October, 1902.

All done in the Central Division of the Western District of Missouri.

E. R. DURHAM,
U. S. Marshal,
By T. H. McKENNA, *Deputy.*

Thereafter, to-wit, on the 22nd day of December, 1902, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day comes defendant by its attorneys and files answer. Said answer is in words and figures as follows to-wit:

In the United States Circuit Court of the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Answer.

Now comes the defendant and admits that plaintiff is a resident of the Western District of Missouri; that the defendant is a corporation of the state of Connecticut, and that the amount sued for herein exceeds $2,000 exclusive of interest and costs.

Admits each and every of the allegations contained in paragraphs one (1) and (2) of the petition, to-wit, admits that defendant is a corporation of the State of Connecticut engaged in the life and accident insurance business and that it is now and at all times stated in the petition was qualified to do business in the state of Missouri, having fully complied with the laws thereof and obtained and held a license to do business therein and admits that in consideration of the payment to it of the premium therein named, defendant on November 3, 1900, issued, executed and delivered to James Whitfield at Kansas City, Missouri, the policy sued on in this case, which was in words and figures as set forth in the petition and that said policy was from time to time renewed and was in full force and effect at the time of the death of James Whitfield.

Denies each and every of the allegations of paragraph three (3) of the petition.

Admits that James Whitfield died on April 7th, 1902, at Kansas City, Missouri, while the policy sued on was in full force but
12 denies that he died from bodily injuries effected through external violent and accidental means, but admits that he died from bodily injuries caused by a pistol shot but alleges that said injury and death was not accidental, but was caused by a pistol shot intentionally fired by said James Whitfield for the purpose of taking his own life and that the cause of the death of said Whitfield was suicide.

Defendant admits each and every allegation of paragraph four (4) and five (5) of said petition, to-wit, that plaintiff was at the time of the issuance of said policy, and at the time of his death the wife and is now the widow of James Whitfield, and that plaintiff gave immediate and sufficient notice of the death of said James Whitfield, and demanded payment of the policy and afterwards on May 3, 1902, at defendant's request made detailed proof of such death and that defendant made an investigation of said death and waived further proof and offered plaintiff $500 as the full amount due under said policy and then and thereafter refused to pay any further sum.

Further answering said petition defendant alleges that the contract sued upon is a policy of accident insurance and insured the said James Whitfield against loss of time resulting from bodily injuries effected through external, violent and accidental means in a specified sum weekly during disability as well as against death resulting from bodily injuries effected through external, violent and accidental means in the principal sum of five thousand dollars but further provides that if such injuries are received while insured is riding in a passenger conveyance or elevator or on a bicycle or in a burning building the amount to be paid shall be double the principal sum or $10,000; that if death is due to sunstroke or freezing or the result of unnecessary exposure to obvious risk or to contact with poisonous substances, or hernia, or where there is no visible mark on the body, then the amount to be paid shall be one-fifth of the principal sum or $1000; and further provides that in the event death is caused by intentional injuries inflicted by the insured or any other person, whether such person be sane or insane, or while fighting or in a riot, or by suicide, sane or insane, or by poison or by inhaling gas or vapor, or while under the influence of intoxicants or narcotics then the amount to be paid shall be one-tenth (1/10) of the principal sum or $500.

Defendant states that said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose thereby of taking his own life; that the cause of the death of said Whitfield was suicide.

13 Defendant states that under the provisions of said policy it is liable to plaintiff in the sum of $500; that this is the full sum it contracted to pay plaintiff in the event the death of said Whitfield was caused by suicide or by intentional injuries inflicted upon himself; that it is now ready and willing and tenders the plaintiff said amount; that it has always been ready and willing to pay said sum and prior to the institution of this suit tendered said sum to plaintiff and defendant now offers to let judgment go against it for said sum of $500.

Wherefore *plaintiff* prays that judgment be entered herein in favor of plaintiff and against defendant for the sum of $500 and that the costs of this proceeding be taxed against the plaintiff.

JONES, JONES & HOCKER AND
L. C. BOYLE,
Attorneys for Defendant.

Thereafter, to-wit, on the 23rd day of December, 1902, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day comes plaintiff by her attorneys and files demurrer to defendant's answer.

Thereafter, to-wit, on the 4th day of May, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

Now on this day the demurrer to the answer coming on for hearing the same is argued by counsel and submitted to the Court.

Thereafter to-wit, on the 8th day of May, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

The demurrer to the answer having been heretofore submitted to the court and taken under advisement, now the Court being fully advised in the premises doth order that said demurrer be overruled with leave to plaintiff to file reply by Monday next.

14 Thereafter, to-wit, on the 21st day of May, 1903, the following entry appeared of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day come the parties by their attorneys, the plaintiff by Frank Hagerman, and the defendant by Jones, Jones & Hocker and L. C. Boyle. Thereupon plaintiff files reply, and the defendant files motion to strike out parts thereof, and the same being submitted the same is sustained. Thereupon the parties file a stipulation waiving a jury, and an agreed statement of facts, whereupon this case is submitted to the Court and by the Court taken under advisement.

Said reply is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Reply.

Now comes plaintiff and for reply to the answer of defendant admits that James Whitfield died from bodily injuries caused by a pistol shot fired by himself and the cause of his death was suicide but said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing, and when he did not realize or know, what he was doing or the consequences of his act.

Wherefore plaintiff prays as in the petition.

FRANK HAGERMAN,
Attorney for Plaintiff.

Said jury waiver is in words and figures as follows, to-wit:

No. 2698.

WHITFIELD
vs.
INS. CO.

For the purposes of a trial at this time, a jury is waived, this waiver not to apply to any future trials.

FRANK HAGERMAN,
Att'y for Pl'ff.
JONES, JONES & HOCKER,
BOYLE, GUTHRIE & HURT,
Att'ys for Def't.

15 Thereafter, to-wit, on Monday, the 2nd day of November, 1903, the same being a day of the regular November Term of said court, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INSURANCE COMPANY.

This cause having been heretofore submitted to the Court and taken under advisement, now the court being fully advised in the premises doth file the following finding of facts:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

This cause coming on for hearing, and the parties by stipulation having waived a trial by jury, the same was taken up and submitted by the respective counsel to the court on the following agreed statement of facts, to-wit:

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Partial Agreed Statement of Facts.

1. Amanda M. S. Whitfield is now, and was at the time of the institution of this suit, a citizen and resident of the Western District of Missouri, and was at the time of the issuance of the policy hereinafter [referred] to, and at the time of the death of James Whitfield, the wife of the said James Whitfield and is now his widow.

2. Defendant was, at the time of the issuance of the policy hereinafter mentioned, and has ever since been, a corporation, organized and existing under the laws of the state of Connecticut, engaged in the life and accident insurance business and is now, and was at all the times hereinafter named, qualified to do business in the state of Missouri, having fully complied with the laws thereof, obtaining and holding a certificate and license to do business therein.

3. In consideration of the payment to it of the premium therein named, defendant did, on November 3rd, 1900, issue execute and deliver to James Whitfield at Kansas City, Missouri, a policy
16 of insurance in the words set forth in the form of the policy set forth in the petition filed herein which is hereby made part hereof. Said policy was from time to time and continuously renewed by the payment of quarterly premiums in advance, so that

the same was in full force and effect at the time of the death of James Whitfield.

4. On April 7th, 1902, while said policy was in full force at Kansas City, Missouri, said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself, for the purpose of thereby taking his own life; that the cause of the death of said Whitfield was suicide.

5. Immediately upon the death of James Whitfield the plaintiff gave notice in writing to defendant, in compliance with the terms of the policy, and demanded payment of the amount thereof, and afterwards, at defendant's request, on May 3rd, 1902, gave a more detailed proof, and defendant then made its own investigation and waived any further proof, and within the time limited in the policy offered to pay and tendered to plaintiff the sum of five hundred dollars ($500.00) as the full amount due by virtue of section 5 of the policy, which sum plaintiff then and has ever since, refused, and defendant then and there and ever since has refused to pay any further sum, although it was demanded by the plaintiff.

6. Defendant now tenders and offers to pay plaintiff or into court for her use the sum of $500.

7. Either party may introduce any further evidence, not contradictory of this stipulation, that may be competent and material to the issues herein, but it shall not be deemed contradictory of this stipulation for the plaintiff to prove, if she can and desires so to do, that at the time said Whitfield killed himself, he was not in such condition of mind to realize what he was doing or know the consequences of his act.

JONES, JONES & HOCKER AND
LOUIS C. BOYLE,
Attorneys for Defendant.
FRANK HAGERMAN,
Attorney for Plaintiff.

8. The Court further finds the fact to be that neither party introduced any further evidence pursuant to the provisions of paragraph 7 of the agreed statement of facts.

9. On the foregoing facts the Court declares the law to be that the plaintiff is not entitled to recover the sum of five thousand dollars on the policy sued on, but the plaintiff is entitled to re-
17 cover of the defendant the sum of five hundred dollars with costs.

Judgment accordingly.

(Signed) JNO. F. PHILIPS, *Judge.*

It is therefore, considered, ordered and adjudged by the Court that the plaintiff Amanda M. S. Whitfield, have and recover of the defendant Aetna Life Insurance Company of Hartford, Connecticut, said sum of five hundred dollars ($500.00) so found to be due together with her costs herein laid out and expended and have thereof execution.

Thereafter, to-wit, on the 25th day of November, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INSURANCE CO.

This day comes plaintiff by her attorney and files assignment of errors, and presents a bill of exceptions and a bond for writ of error. Thereupon said bill of exceptions is allowed and signed and said bond approved and the same are ordered to be filed and made a part of the record herein. Whereupon a citation is signed and a writ of error allowed.

Said assignment of errors is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Assignment of Errors.

Now comes plaintiff and files this, her assignment of errors preparatory to removing this case to the Circuit Court of Appeals upon writ of error. This Court erred in each of the following respects:

1. In sustaining the motion of defendant to strike out a portion of the reply of plaintiff, which portion so stricken out is in words and [fig-res] as follows:

"But said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing, and when he did not realize or know, what he was doing or the consequences of his act."

18 2. The court erred in rendering judgment upon the agreed statement of facts and its special finding for five hundred dollars ($500.00).

3. The court erred in not rendering judgment upon the agreed statement of facts and special finding in excess of five hundred dollars ($500.00).

4. The court erred in not rendering judgment for five thousand dollars ($5000.00) and interest upon the agreed statement of facts and special finding.

5. The court erred in holding that under the facts as found and as agreed upon plaintiff was limited in her recovery to five hundred dollars ($500.00).

6. The court erred in holding that under Section 7896 of the Re-

vised Statutes of Missouri, 1899, the defendant could, upon the policy in suit, limit its liability in case of suicide to five hundred dollars ($500.00).

FRANK HAGERMAN,
Att'y for Plaintiff.

Said Bill of Exceptions is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant.

Bill of Exceptions.

Be it remembered, that on the 21st day of May, at the April term of court, 1903, the defendant presented motion to strike out portion of the plaintiff's reply, which motion was in words and figures, as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Now at this date comes the defendant and moves the court to strike out all of that part of the reply heretofore filed in this case, beginning with the twelfth word of the third line, and ending
19 with the last word of the seventh line, which reads as follows:
"But said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing and when he did not realize or know what he was doing or the consequences of his act."

For reason for this motion the defendant shows the court that such part of said reply is incompetent and irrelevant and pleads no valid excuse for the defense set up in the defendant's answer.

BOYLE, GUTHRIE & HURT,
JONES, JONES & HOCKER,
Attorneys for Defendant.

which motion was then and there sustained by the Court, to which action of the Court the plaintiff at the time excepted; thereafter to-wit, on May 21, 1903, a jury being waived, the parties filed herein an agreed statement of facts, which appears from the records herein, and on the same day the cause was submitted to, and taken under

advisement by the court, and on the 2nd day of November, 1903, at the November term, 1903, the court made its finding and rendered judgment on the finding of facts as appears by the record herein.

And now on this 25th day of November, 1903, at the November term, 1903, of said court, the plaintiff tenders her Bill of Exceptions, which is now signed and made a part of the records herein.

(Signed) JNO. F. PHILIPS, *Judge.*

Said bond for writ of error is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA, *sct:*

Know all men by these presents, that we, Amanda M. S. Whitfield, as principal and John D. Swan of Jackson Co., Mo. as surety, are held and firmly bound unto Aetna Life Insurance Company of Hartford, Connecticut in the full and just sum of three hundred dollars to be paid to the said Aetna Life Insurance Company its heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 23rd day of November in the year of our Lord, one thousand nine hundred and three.

Whereas, lately at the November 1903 term of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between Amanda
20 M. S. Whitfield, plaintiff and Aetna Life Insurance Company of Hartford, Connecticut, defendant, judgment was rendered against the said company but for a less amount than claimed by plaintiff who has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Amanda M. S. Whitfield shall prosecute said writ of error to effect, and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

AMANDA M. S. WHITFIELD. [SEAL.]
JOHN D. SWAN. [SEAL.]

Signed and sealed in presence of

WM. C. WHITFIELD.

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA, *Western District of Missouri, ss:*

John D. Swan, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides as stated therein, and is worth, over and above all his debts and liabilities the sum of one thousand dollars, and that he owns real and personal property to that amount, subject to execution, in the state of Missouri.

JOHN D. SWAN.

Subscribed and sworn to before me this 23rd day of November, A. D. 1903.

[SEAL.] OSCAR HOCHLAND,
Notary Public, Jackson County, Mo.

The opinion filed herein is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant.

Opinion by Philips, D. J.

The question to be decided is, whether, upon the agreed statement of facts, the plaintiff is entitled to recover the sum of five
21 thousand dollars, the principal sum designated at the head of the insurance policy, or the sum of five hundred dollars, specified in the contract as the sum recoverable where the death of the assured resulted from injuries voluntarily inflicted upon himself by a pistol shot. The decision turns upon the proper construction of Section 7896 of the Revised Statutes of Missouri, of 1899, which declares that

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

It is conceded, in the absence of this express statutory provision, that at common law suicide, voluntarily inflicted by the assured would constitute a complete defense to the action on the policy contract. The statute in question simply declares that "it shall be no defense that the insured committed suicide" in a suit upon such policy.

In Logan *vs.* Fidelity & Casualty Company, 146 Mo. 114, the Su-

preme Court held that said section of the statute applies to an accident policy on life as well as to an ordinary life insurance policy.

As this statute is in derogation of the common law right of defense, it is not to be extended beyond the letter and spirit of the statute. It does not undertake to declare that under an accident policy, involving a great variety of accidents resulting in death, as does the policy in question, parties may not stipulate for the payment of a specified sum in the event of death resulting from suicide. It simply declares that the fact of suicide shall constitute no defense to the suit. It is to be presumed that the term "defense" was employed by the legislature in its ordinary and natural import. By express provision of the state statute (Sec. 4160) it is declared that in the construction of statutes of this state, unless such construction be plainly repugnant to the intent of the legislature or the context of the same statute, "words and phrases shall be taken in their plain or ordinary or usual sense; but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." In law, "defense" is "that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to defeat an action." Black's Law Dictionary. "The denial of the truth or validity
22 of the complaint. A general assertion that the plaintiff has no ground of action." Bouvier's Law Dictionary.

To say that when the defendant insists that on the face of the very contract sued on its liability in case of suicide, is limited to $500.00, is some defense, and, therefore, is in contravention of the term "it shall be no defense," is, with all due respect, to juggle with mere words without regard to the meaning. The term "it shall be no defense" is grammatically the equivalent of it shall not be a defense. It means no more and no less. In law it means that the given fact of death by suicide shall not bar an action on the policy.

The statute does not undertake to say that parties making a contract of insurance shall not agree upon the amount or compensation to be paid by the insurance company, in the event of death resulting from suicide. Why parties to such contract may not agree upon a stipulated amount, to be paid in case of death resulting from suicide, as well as death resulting from an accident on a railroad car, or occurring in a burning building (which under this policy is made double the amount of the principal liability) is not apparent. As said by the court in Baltimore R. *vs.* Voigt, 176 U. S. 498.

"The right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare."

"No statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express." Shaw *vs.* Railroad Company, 101, U. S. 565.

In Hadden *vs.* Collector, 5th Wall. 107-111, the court said:

"What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes."

So in Scott *vs.* Reid, 10 Peters 524-527, the Court said:

"Where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature.
23 * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The only limitation in the language of the statute in question is that in case of death resulting from suicide it shall constitute no defense against liability on the policy; that is to say, it shall not defeat a right of recovery to the extent of the sum stipulated for in the policy. The innovation, in short, made by the statute was to cut off a defense based upon the fact that the assured committed suicide, without undertaking to interfere with the right of contract between parties, *sui juris* as to the extent of liability in case of death resulting from the specific cause.

The purpose of fixing in the caption of the policy a principal liability of five thousand dollars becomes evident under a policy like the one in question, which provides that in case of certain physical disabilities resulting from accidental causes there shall be a specified amount per week. Under such provision if there were no principal liability expressed, as the disability would be continuous, as in case of the loss of a hand, or foot, or an eye, the recovery might run on without limit during the life of the insured, and in the aggregate far exceed the sum of five thousand dollars, the principal sum.

The Supreme Court of this state has not construed the statute in question in the particular here involved. The Logan case, *supra*, does not bind or control this court except insofar as the question involved in that case was determined by the Supreme Court, which was simply whether or not the section of the statute above quoted applies to the instance of death by suicide on an accident policy as well as to other life insurance policies. Under the well recognized rule that the language employed by courts in construing statutes can have no binding effect in other litigation beyond the essential matter considered and determined in the former case, any discussion by the court in the Logan case must be restrained to the fitness of the matter under consideration.

The decision of the Court of Appeals of this state in Keller *vs.* Traveler's Insurance Company, 58 M. A. 557, is not binding upon this court, as it is not a court of the highest jurisdiction in the state. It is not maintainable that the statute in question establishes any public policy of the state beyond its expression, that is that suicide shall constitute no defense against liability of the company on an

accident insurance policy. As already suggested the statute does not undertake to declare that an insurance company may not issue a policy of insurance by which the parties agree that in case of death resulting from suicide what the amount of recovery shall be. I cannot perceive why the legislature should deem it contrary
24 to the public policy of the state to permit the insured to agree with the insurance company by contract that in the event of death resulting from a voluntary act of suicide what amount should be paid by the insurer. Looking at the language of the statute and taken in its legal technical sense, in my humble opinion, nothing more was intended than that in view of the fact that insurance companies under like policies had successfully interposed as a complete defense against any liability that the insured had taken his own life, hereafter no such defense should avail to defeat a recovery. As the legislature has gone no further in the assertion of the state policy, the courts ought not to undertake by mere judicial assertion to extend the operation of the statute.

In reply to the suggestion that the foregoing construction of the statute would authorize a practical evasion of its spirit by recognizing the right of the contracting parties to limit the amount of recovery to one dollar, it should be enough to say that illustrations are often dangerous in the construction of statutes. It is sufficient for the court to decide the particular case on trial. It is hardly conceivable that a party aware of his rights under the statute, and the law presumes him to be cognizant thereof, would consent to accept as compensation for such loss the sum of one dollar; and if he should it would be for the court to decide whether such inconsequential sum was not a practical evasion of the spirit of the statute. The sum of five hundred dollars, provided for in this case, is a substantial sum; and as the pleading of the contract in question, voluntarily entered into by the parties, goes merely to the question of the amount of the recovery, and not to defeat a recovery, my conclusion is that the plaintiff is only entitled to recover the sum of five hundred dollars.

UNITED STATES OF AMERICA, *act:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors, and all proceedings in the cause wherein Amanda M. S. Whitfield is plaintiff and Aetna Life Insurance Company is defendant as fully as the same appears on file and of record in my office.

Witness my hand as clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 3rd day of December, 1903.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Filed Dec. 7, 1903.
JOHN D. JORDAN, *Clerk.*

25 *(Clerk's Certificate to Printed Record.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing printed record of twenty-four pages in the case of Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company of Hartford, Connecticut, No. 2013, was printed under my supervision and is identical with the printed record upon which said cause was heard and decided in the Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this tenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

26 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1905, of said Court, begun and held at the City of St. Louis, Missouri, on the first Monday in December, to-wit: the fourth day of December, A. D. 1905, before the Honorable Willis Van Devanter and the Honorable William C. Hook, Circuit Judges, and the Honorable William Lochren, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the seventh day of December, A. D. 1903, a transcript of record, pursuant to a writ of error directed to the Circuit Court of the United States for the Western District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Amanda M. S. Whitfield was Plaintiff in Error, and the Aetna Life Insurance Company of Hartford, Connecticut, was Defendant in Error, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 2013.

That thereafter the following proceedings were had in said cause, in said Circuit Court of Appeals, viz:

27 (*Appearance of Mr. Frank Hagerman as Counsel for the Plaintiff in Error.*)

On the eighth day of December, A. D. 1903, the appearance of Mr. Frank Hagerman as counsel for the plaintiff in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

FRANK HAGERMAN.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Dec. 8, 1903, John D. Jordan, Clerk. Frank Hagerman, Counsel for Pl'ff in Error.

(*Appearance of Mr. James C. Jones and Mr. Lon O. Hocker as Counsel for the Defendant in Error.*)

And on the twenty-sixth day of January, A. D. 1904, the appearance of Mr. James C. Jones and Mr. Lon O. Hocker as counsel for the defendant in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

28

JAMES C. JONES.
LON O. HOCKER.
JONES, JONES & HOCKER.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Jan. 26, 1904, John D. Jordan, Clerk. James C. Jones, Lon O. Hocker, Counsel for Def't in Error.

(Appearance of Mr. L. C. Boyle and Mr. W. F. Guthrie as Counsel for Defendant in Error.)

And on the twenty-seventh day of January, A. D. 1904, the appearance of Mr. L. C. Boyle and Mr. W. F. Guthrie as counsel for the defendant in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

L. C. BOYLE.
W. F. GUTHRIE.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Jan. 27, 1904, John D. Jordan, Clerk. L. C. Boyle, W. F. Guthrie, Counsel for Def't in Error.

(Order of Submission.)

And on the sixteenth day of May, A. D. 1904, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

29 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1904.

MONDAY, *May* 16, 1904.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY.

In Error to the Circuit Court of the United States for the Western District of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Frank Hagerman for Plaintiff in Error and concluded by Mr. James C. Jones for Defendant in Error. Thereupon, this cause was submitted to the Court on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventh day of March, A. D. 1906, an opinion of said Circuit Court of Appeals was filed in said cause, in the words and figures following, to-wit:

30 United States Circuit Court of Appeals, Eighth Circuit.

No. 2013. December Term, A. D. 1905.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant in Error.

In Error to the Circuit Court of the United States for the Western District of Missouri.

Mr. Frank Hagerman for plaintiff in error.
Mr. James C. Jones (Mr. Lon O. Hocker, Mr. L. C. Boyle, Mr. W. F. Guthrie, Mr. L. F. Davison and Mr. C. G. B. Drummond, were with him on the brief) for the defendant in error.

Before Van Devanter and Hook, Circuit Judges, and Lochren, District Judge.

Syllabus.

INSURANCE ON LIFE—PRO-SUICIDE STATUTE OF MISSOURI—CONSTRUCTION.—Sec. 7896 Rev. St. Mo. 1899, which provides: "In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void," being in derogation of the common law, in restraint of the freedom of contract and subversive of sound morality, should receive a re-trictive rather than an expansive construction and when so construed it prevents the suicide of an insured, whether sane or insane, from avoiding his insurance, either by operation of law or by stipulation of the parties, unless the act was contemplated by him at the time of making application for the policy, but it does not take from the parties the right to contract respecting the classification of risks and the amount of insurance which shall be provided for each, so long as they do not substantially eliminate suicide from the risks covered by any policy to which the statute is applicable.

Statement.

On the 3rd day of November, 1900, the Aetna Life Insurance Company, a corporation created under the laws of Connecti-
31 cut and doing business in the State of Missouri, issued in the latter State to James Whitfield, a citizen of that State, a policy of accident insurance, the material portions of which are as follows:

"Twentieth Century Combination.

Principal Sum $5000.00 Accident Policy. Premium $6.25.

"The Aetna Life Insurance Company, of Hartford, Conn., in consideration of the warranties made in the application for this insurance and of the sum of six 25/100 dollars, does hereby insure James Whitfield of the town of Kansas City, County of Jackson, State of Missouri, under classification Preferred, being a sporting editor K. C. Star by occupation, for the term of 3 months from the 29th day of Nov. 1900 (commencing and ending at twelve o'clock, noon standard time) in the sum of twenty-five no/100 dollars per week indemnity against loss of time resulting from bodily injuries effected, during the term of this insurance, through external, violent, and accidental means, which shall independently of all other causes, immediately, continuously and wholly disable him from prosecuting any and every kind of business pertaining to his occupation, above stated; or if such injuries shall not wholly disable the insured, as above, but shall immediately, continuously, and wholly disable him from the performance of one or more important daily duties pertaining to his occupation, or if, followed by a period of total disability resulting from such injuries, he shall be in like manner partially disabled, the company will pay two-fifths of the weekly indemnity herein provided for total disability for the period of such partial disability, but not for more than twenty-six consecutive weeks of partial disability, nor will payments be made for total disability or total and partial disability combined exceeding in amount the principal sum insured by this policy as stated in clause 'E.' * * *

"*a.* If such injuries alone result within ninety days in loss by removal of both hands at or above the wrists, or both feet at or above the ankles, or one hand and one foot at those places, or the irrecoverable loss of the entire sight of both eyes, then the insured shall be paid the full principal sum, insured in lieu of weekly indemnity as herein provided, and this policy shall thereupon cease and be surrendered to the company.

"*b.* If such injuries alone result within ninety days in loss by removal of right hand at or above the wrist, or either leg at or above the knee the insured shall be paid one-half the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company.

"*c.* If such injuries alone result within ninety days in loss by removal of the left hand at or above the wrist, or either foot at or above the ankle, the insured shall be paid one-fifth the principal sum in-

sured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company.

"*d.* If such injuries alone result within ninety days in the irrecoverable loss of the entire sight of one eye, the insured shall be paid one-eighth the principal sum insured in lieu of weekly indemnity as herein provided.

"*e.* If death results solely from such injuries within ninety days, the said Company will pay the principal sum of five thousand no/100 dollars to Amanda M. S. Whitfield, his wife, if living; and
32 in the event of the death of the said beneficiary before the death of the insured, to the executors, administrators, or assigns of the insured.

"*f.* If injuries are sustained by means as aforesaid, (1) while the insured is riding as a passenger in or on any public passenger conveyance, using steam, compressed air, gasoline, cable or electricity as a motive power, or (2) while riding in a regular passenger elevator, or (3) while riding a bicycle (not in a race for prize or purse, concerning which risk, see condition two), or (4) in consequence of the burning of a building in which the insured shall be at the commencement of the fire, the amount to be paid shall be double the sum specified in the clause under which claim is made, subject to all the conditions of this policy.

This policy is issued and accepted subject to the following conditions: * * *

"2. If the insured is * * * accidentally injured while riding a bicycle in a race for prize or purse, the amounts payable will be one-third of the double benefits provided by clause '*f*' hereof.

"3. * * * Clause '*f*' above shall not apply to accidents happening while the insured is boarding or alighting from a street car.

"4. In the event of death, loss of limb or sight, or disability due to sunstroke or freezing; or due to unnecessary exposure to obvious risk of injury or obvious danger; or due to contact with poisonous substances other than to the septic poisoning of wounds accidentally inflicted; or due to hernia, the result of an accident happening subsequent to the issue of this policy; or in event of death following bodily injuries of which there existed no external or visible mark upon the body of contusion or wound sufficient to cause death (accidental drowning only excepted), and an autopsy showed that such injuries contributed materially to the death of insured, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-fifth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

"5. In event of death, loss of limb or sight, or disability due to injuries intentionally inflicted upon the insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries intentionally inflicted upon the insured by himself; or due to suicide, sane or insane; or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influ-

ence of intoxicants or narcotics, then in all such cases referred to in this paragraph, the limit of the company's liability shall be one-tenth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding."

By the regular payment of quarterly premiums in advance the policy was continued in force until and including the 7th day of April, 1902, when the insured died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose of thereby taking his own life, the death being due to suicide. Amanda M. S. Whitfield, the beneficiary in the event of death, gave due notice and made due proofs of the death and demanded payment of the policy. The company tendered to her $500 as the amount
33 stipulated to be paid in the event of death by suicide, but she refused to accept that sum and brought an action upon the policy. The trial was — to the court, under a written stipulation waiving a jury, and resulted in a special finding of the facts here stated, upon which judgment was given for the plaintiff in the sum of $500. 125 Fed. 269. She sought to recover $5000, and in furtherance of that claim prosecutes this writ of error.

VAN DEVANTER, Circuit Judge, after stating the case as above, delivered the opinion of the court:

The only question arising upon this record is, whether the court failed to give proper effect to the statute of Missouri which provides:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." (Rev. St. 1899, Sec. 7896).

As the policy was issued and delivered in Missouri to one of her citizens by a company doing business in that state, there can be no question but that effect must be given to the statute, if it is applicable to a policy, like the one here sued upon, which insures against death resulting solely from injuries effected through external, violent and accidental means; and that it is applicable to such a policy is determined in Logan *v.* Fidelity and Casualty Co., 146 Mo. 114. But that our reference to that cause may not be misunderstood, it may be properly observed that we do not understand it as holding that, by reason of the statute, every policy of insurance on life, issued by a company doing business in Missouri to a citizen of that state, covers death by suicide irrespective of the scope or character of the policy. To illustrate, we do not understand it as holding that the effect of the statute is, that an insurance against death resulting from a particular disease or from the hazards of a particular employment or mode of travel is also an insurance against death by suicide. Rightly considered, the holding in this respect is nothing more than that the statute is applicable to insurance against loss of life by external, violent and accidental means because this, as was held in

Accident Ins. Co. *v.* Crandal, 120 U. S. 527, 533, 534, includes suicide by one who is insane. That this is so is shown, as we think, by the court's statement (p. 120) of the sole question presented for decision, viz:

"Is suicide in this State a valid defense to an action upon a policy of insurance issued by an accident insurance company, containing provisions such as the one in controversy, where it is not shown that the insured contemplated suicide at the time he made his application for the policy (*and it being admitted that the assured afterwards came to his death from external violent and accidental means*)?"

And by that portion of the opinion (p.123) in which it is said:

"When a policy covers loss of life from external, violent and accidental means alone, why is it not insurance on life? Such a provision incorporated in a general life insurance policy admittedly would be insurance on life, then why less insurance on life be-
34 cause not coupled with provisions covering loss of life from unusual or natural causes as well? If one holds a general life policy and an accident policy, and is killed by lightning or commits suicide, *so that he may be said to have died by accidental means*, both the companies should pay, and the stipulation against liability in the event of suicide in the policies should be no more a defense against the suit upon the accident policy, providing against death from accidental cause, than against the policy which goes further and covers death from other causes as well."

But the question arising upon this record is not solved by ascertaining that the statute is applicable to the policy sued upon. It must also be ascertained whether, apart from the qualifying clause, the effect of the statute is to prevent the suicide of an insured from operating as an avoidance of his insurance, either by operation of law or by reason of some stipulation in the policy; or whether it goes further and prevents all discrimination against suicide as a risk. If the latter be the correct view, as is asserted by the plaintiff, it follows logically that in a policy where the risks are classified and a distinct amount of insurance is provided for each class, suicide must be included among the risks for which the highest amount of insurance is provided, although the insured may not care to pay the cost of providing so much insurance for that risk or may deem it prudent to provide a larger amount of insurance for other risks. Either this is so or the parties are left free to contract respecting the classification of the risks and the amount of insurance which shall be provided for each, so long as they do not indirectly but substantially make suicide a defense to an action upon the policy.

We think there are insuperable objections to the plaintiff's contention.

The statute abrogates a common law defense and puts a restraint upon the freedom of contract. This alone indicates that it should receive a restrictive rather than an expansive construction. Brown *v.* Barry, 3 Dall. 365, 367; McCool *v.* Smith, 1 Black, 459, 470; Shaw *v.* Railroad Co., 101 U. S. 557, 565; Baltimore, etc., Ry. Co. *v.* Voigt, 176 U. S. 498, 505; Prescott, etc., Co. *v.* Atchison, etc., Co. 73 Fed. 438; Barry *v.* Snowden, 106 Fed. 571; Smith *v.* Spooner, 3 Pick.

229. But the occasion for avoiding an expansive construction is more apparent when it is considered that the statute makes the wilful self-destruction of the insured whilst sane an insurable risk, and that the restraint which it puts upon the right of the parties to contract according to their own judgment applies to that risk as well as to the risk of the insured dying by his own hand whilst insane. Knights Templar, etc., Co. *v.* Jarman, 44 C. C. A. 93, 104 Fed. 638; S. C., 187 U. S. 197. Of insurance against the insured's suicide whilst sane, it is said in Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139, 154, in connection with an extended consideration of the authorities:

"When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract.

"There is another consideration supporting the contention that death intentionally caused by the act of the assured when in sound mind—the policy being silent as to suicide—is not to be deemed to have been within the contemplation of the parties; that is, that a different view would attribute to them a purpose to make a contract that could not be enforced without injury to the public. A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment. If, therefore, a policy—taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns—expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted."

It hardly needs statement that a thing which is inherently subversive of sound morality is none the less so because sanctioned by statute, and yet if the statute violates no constitutional provision or principle effect must be given to it and the responsibility for its enactment and consequences must rest with the legislature. Courts, however, always avoid a construction which will render a statute subversive of sound morality, unjust, or absurd, if a more sensible construction can be given to it; and, if its terms be such that it must unavoidably lead to evil, unjust or absurd consequences, the courts give to it such effect only as is necessarily required by the clear import of its language. This is not rejecting or revising the action of the legislature but effectuating what is reasonably and conclusively presumed to be its real intent. United States *v.* Kirby, 7 Wall. 482; Holy Trinity Church *v.* United States, 143 U. S. 457, 459, 461; Lau Ow Bew *v.* United States, 144 U. S. 47, 59; *In re* Chapman, 166 U. S. 661, 667; Knowlton *v.* Moore, 178 U. S. 41, 77; Knights Templar,

etc., Co. *v.* Jarman, 187 U. S. 197, 201; St. Louis, etc., Co. *v.* Evans, etc., Co., 85 Mo. 307, 329; State *v.* Chyo Chiagk, 92 Mo. 395, 408; Verdin *v.* City of St. Louis, 131 Mo. 26, 163. And so it is to effectuate the true legislative intent that a statute in derogation of the common law or in restraint of the freedom of contract is held to make no change in the law which it does not fairly express.

Applying these rules of interpretation to the present statute, we think that while it prevents the suicide of an insured, whether sane or insane, from avoiding his insurance, either by operation of law or by stipulation of the parties, unless the act was contemplated by him at the time of making application for the policy, it leaves the parties free to contract respecting the classification of the risks and the amount of insurance which shall be provided for each, so long as they do not by that means indirectly but substantially make suicide a defense to an action upon the policy.

The contention to the contrary is rested upon the declaration that "it shall be no defense that the insured committed suicide," and is, that when a policy insures against death by one or more means in a specified amount and against death by suicide in a lesser amount, suicide is thereby made a partial defense to an action on the policy. We cannot assent to this view. To do so is to discard the rational and established rules of interpretation before stated. The statute does not say that the amount of insurance provided for in the
36 event of death by suicide shall not be less than is provided for when death results in some other way, nor that there shall be no discrimination of any kind against suicide as a risk. Nor is it an apt or natural way of expressing that thought to declare that it shall be no defense that the insured committed suicide, and that any stipulation to the contrary shall be void. In the absence of the statute an insured's suicide whilst sane avoids his insurance, not partially but completely, and, under the qualifying clause of the statute, that is still the effect of such self-destruction, if it was contemplated by the insured at the time he made application for the policy. Thus the defense which the statute is primarily designed to abrogate, as also the one which it still sanctions, is a complete and not a partial one. Moreover, we think it is altogether a mistaken use of the word defense to say that a policy which provides for insurance against death by one or more means in a specified amount and against death by another means in a lesser amount, makes death by the latter means a defense, partial or otherwise, to an action on the policy. On the contrary, such a policy accepts as a risk death by the latter means, and in the event of its occurrence gives a right of action against the insurer.

These considerations convince us that the statute does not abridge the freedom of contract further than to prevent the elimination of suicide from the risks covered by any policy to which it is applicable.

But it is said that if this be so the statute can be evaded and its purpose defeated by providing for the payment of some inconsiderable sum, such as one dollar, in the event of suicide. We think otherwise. That would be an indirect but substantial elimination of suicide from the risks covered by the policy and would be as much

within the inhibition of the statute as would be a stipulation directly declaring suicide to be a defense. We do not doubt that any policy falling within the operation of the statute must provide substantial insurance against suicide, but beyond this the freedom of contract is not affected.

It is also said that the courts of the State and this court have heretofore placed upon the statute a construction different from that given to it in this opinion, and the following cases are cited as sustaining the contention: Logan *v.* Fidelity and Casualty Co., 146 Mo. 114; Knights Templar, etc., Co. *v.* Berry, 1 C. C. A. 561, 50 Fed. 511; Knights Templar, etc., Co. *v.* Jarman, 44 C. C. A. 93, 104 Fed. 638; Kellar *v.* Traveler's Ins. Co., 58 Mo. App. 557. The first three contain no statement, discussion or decision of the question now under consideration. The policy sued upon in each attempted in terms or in effect to eliminate suicide from the risks covered by it and to provide that in the event of the death of the insured by that means the insurer would be liable only for the repayment of what it had received in the way of premiums or assessments. Thus instead of accepting suicide as a risk, the policy attempted to make it a ground for completely avoiding the right to any insurance. It is doubtful whether the policy sued upon in the other case is properly distinguishable from those just described, but, if it is, the case tends to sustain the plaintiff's contention, because it was there held by the St. Louis Court of Appeals, Judges Bond and Rombauer, that where a policy provides that the insurance in the event of the insured's suicide shall be less than when death results from other causes, it thereby makes suicide a partial defense to an action upon the
37 policy and in that respect is violative of the statute. We are unable to assent to that conclusion. The considerations before mentioned persuade us that it is clearly wrong, and as the St. Louis Court of Appeals, while of high repute, is not a court of last resort, whose decisions settle the law of the State, we must give effect to our own interpretation of the statute.

Looking at the present policy, the material portions of which have been heretofore set forth, we find that it is headed "Principal Sum $5000.00;" that in the event of injury not resulting in death it provides for certain payments graduated according to the circumstances, nature and extent of the injury, and that in the event of death it provides for the payment (*a*) of double the principal sum when death results from injury sustained while the insured is riding as a passenger in or on any public passenger conveyance, etc., (*b*) of the principal sum when death results from injuries not otherwise classified, (*c*) of two-thirds of the principal sum when death results from injury sustained while riding a bicycle in a race for prize or purse, (*d*) of one-fifth of the principal sum when death is due to sun-stroke, freezing, unnecessary exposure to obvious risks of injury, etc., (*e*) of one-tenth of the principal sum when death is due to injuries intentionally inflicted upon the insured by another or is due to suicide, sane or insane, etc. The classification of the several risks appears to be rational and honest, and the amount of insurance provided for the class which includes suicide is five hundred dollars, a very sub-

stantial sum when compared with six dollars and twenty-five cents, the premium paid. Considered in its entirety, the policy precludes any suggestion of a purpose to evade the statute.

The plaintiff places some reliance upon the particular language in which the parties have expressed their engagement and points out that one paragraph of the policy is so framed that, if not otherwise restrained, it creates a liability on the part of the insurer in the sum of five thousand dollars in the event of the death of the insured by any means covered by the policy, and that another paragraph is so framed that it reduces the liability to five hundred dollars in the event of death by suicide. This it is said indicates a purpose to make suicide a defense, to the extent of forty-five hundred dollars, to an action on the policy. There are two answers to this. One is, that the paragraph first named is not the whole policy, but only part of it, and that an action instituted to enforce that paragraph, regardless of the proper effect thereon of other paragraphs, would not in truth be an action on the policy but an inadmissible action on an inseparable portion of it. The other is, that as it was consistent with the statute for the parties to enter into an engagement whereby the amount of insurance provided for in the event of suicide was less than the amount provided for in the event of death by other means, it is immaterial in what particular language they have expressed that engagement.

Our conclusion is that the judgment was right and it is

Affirmed.

Filed March 7, 1906.

38 (*Judgment.*)

And on the seventh day of March, A. D. 1906, in the record of the proceedings of said Circuit Court of Appeals is a judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1905.

WEDNESDAY, *March* 7, 1906.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

In Error to the Circuit Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court, in this

cause, be, and the same is hereby, affirmed with costs; and that the Aetna Life Insurance Company of Hartford, Connecticut, have and recover against Amanda M. S. Whitfield the sum of twenty dollars for its costs herein and have execution therefor.

March 7, 1906.

39 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing thirteen pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said Circuit Court of Appeals (except the transcript of the record from the Circuit Court of the United States for the Western District of Missouri), in a certain cause in said Court wherein Amanda M. S. Whitfield is Plaintiff in Error and the Aetna Life Insurance Company of Hartford, Connecticut, is Defendant in Error, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this tenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

40 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Amanda M. S. Whitfield, is plaintiff in error, and Aetna Life Insurance Company of Hartford, Connecticut is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Western District of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
41 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the first day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company of Hartford, Connecticut, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in St. Louis, Missouri, this fourth day of May, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

42 In the Circuit Court of Appeals for the Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant in Error.

Stipulation.

The parties hereby stipulate that the certified transcript of record on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari issued May 1, 1906, and the Clerk of this Court may transmit a certified copy of this stipulation with his return to the said writ.

FRANK HAGERMAN,
Attorneys for Plaintiff in Error.
JONES, JONES & HOCKER,
Attorneys for Defendant in Error.

(Endorsed:) U. S. Circuit Court of Appeals. No. 2013. Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company. Stipulation as to Clerk's return to Writ of Certiorari. Filed May 4, 1906, John D. Jordan, Clerk.

43 [Endorsed:] 701, #20,203. May 7. File No. 20,203. Supreme Court of the United States. No. 701, October Term, 1905. Amanda S. Whitfield *et al., vs.* Aetna Life Insurance Co. of Hartford, Conn. Writ of Certiorari and return. Filed May 4, 1906. John D. Jordan, Clerk. Filed May 7, 1906.

FILE COPY.

IN THE

UNITED STATES SUPREME COURT.

Office of the Clerk Supreme Court U. S.
FILED
APR 17 1906
JAMES H. McKENNEY,
Clerk.

AMANDA M. S. WHITFIELD and the STATE OF MISSOURI, *ex re*. HERBERT S. HADLEY, Attorney Gene al,

Petitioners,

vs.

AETNA LIFE INSURANCE COMPANY of Hartford, Connecticut,

Respondent.

No. [redacted] 258

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FRANK HAGERMAN,
Attorney for Plaintiff in Error.
HERBERT S. HADLEY,
Attorney General of the State of Missouri.

JOHN S. BOYARD, PRINTER, N. Y. LIFE BLDG., K. C., MO.

IN THE

UNITED STATES SUPREME COURT.

AMANDA M. S. WHITFIELD, and the STATE OF MISSOURI, *ex rel.* HERBERT S. HADLEY, Attorney General,

Petitioners,

vs.

AETNA LIFE INSURANCE COMPANY of Hartford, Connecticut,

Respondent.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Petitioner, Amanda M. S. Whitfield, respectfully petitions this court to grant a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom to this court for review, the record in a case there pending numbered 2013, wherein she was plaintiff in error and respondent was defendant in error, a certified copy of the record being presented herewith.

The State of Missouri, at the relation of Herbert S. Hadley, Attorney General, joins in this petition so that if and when it is granted, the state may be permitted to intervene in the interest of the public and upon behalf of thousands of policy holders who have, since 1879, taken out policies of insurance upon the faith of the validity of the law, which, as construed below, destroys the legislative policy of the state as it has existed for the past twenty-seven years, and impairs the policies so taken out. Thereupon, petitioners respectfully show:

ceased, as plaintiff, sued (Petition, Rec., 3-9) the Aetna Life Insurance Company of Hartford, Connecticut, as defendant, for five thousand dollars upon a policy of insurance (Rec., 3-8) upon the life of her deceased husband, providing for payment "if death results * * * of the principal sum of five thousand * * * dollars," but "in event of death * * * due to suicide" one-tenth thereof The company defended (Ans., Rec., 11-12) upon the sole ground that death occurred by suicide and under the terms of the policy the recovery was limited to one-tenth of the amount of insurance. A jury was waived (Stipulation, Rec., 15) and the case submitted upon an agreed statement of facts (Rec., 15-16), which was incorporated into a special finding of fact (Rec., 15-17) to the effect that the defendant, in Missouri, insured her husband, James Whitfield, who committed suicide during the life of the policy, the defendant admitting its liability, but claiming the extent of the recovery could not exceed five hundred dollars, whereas plaintiff claimed that the defendant could not legally insert in its policy a provision lessening the amount of recovery in case of suicide, because the state statute (R. S. Mo. 1889, Sec. 7896) provided that "it shall be no defense that the insured committed suicide * * * and any stipulation in the policy to the contrary shall be void." The trial court adopted the view that such limitation was valid (Judgment, Rec., 15-17; opinion, Rec., 20-24, 125 Fed. Rep., 269), which upon the plaintiff's writ of error (Rec., 1) the Circuit Court of Appeals affirmed (Rec., 38).

2. The state statute (R. S. Mo. 1899, Sec. 7896), which has been continuously in force since its first enactment in 1879 (R. S. Mo., 1879, Sec. 5982; R. S. Mo. 1889, Sec. 5855), provides:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown, to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time

it issued upon application for the policy and any stipulation in the policy to the contrary shall be void."

3. Both the trial (Rec., 20-24) and appellate (Rec., 27) courts held that the statute only meant that suicide could not be a complete defense, and that it was lawful for the policy to provide for a partial defense to the extent of reducing the amount of recovery in case of suicide.

4. The St. Louis Court of Appeals, after full discussion, expressly held (*Keller* v. *Travelers Insurance Co.*, 58 Mo. App., 557, 561) to the contrary. The Supreme Court of Missouri (*Logan* v. *Fidelity & Casualty Co.*, 146 Mo., 114) and several federal courts (*Berry* v. *Knights Templars*, 46 Fed. Rep., 439, 441; upon appeal, 1 C. C. A., 561, 50 Fed. Rep., 511, 512, 513; *Jarman* v. *Knights Templars Assn.*, 95 Fed. Rep., 70; upon appeal, 44 C. C. A., 93, 104 Fed. Rep., 638; upon *certiorari*, 187 U. S., 199, 47, L. Ed., 139), in upholding the statute, have held invalid provisions that in case of suicide the measure of liability should be a sum equal to the amount of premiums paid. The Circuit Court of Appeals rejected the doctrine of these cases because it was of opinion that in these latter cases there was no particular discussion of that precise point, but said that while the question was expressly decided by the St. Louis Court of Appeals, yet the opinion was not binding, because it was not from the highest court in the state, although, in that particular case, on account of the amount involved, it was the court of last resort, whose decision was so far final that a writ of error from this court would have run directly to it (*M., K. & T. R. Co.*, v. *Elliott*, 184 U. S., 530, 534, 46 L. Ed., 673).

5. The question presented is of great public interest; the enforcement of the legislative policy of the state is at stake, the validity thousands of outstanding policies involved, and if the

decision below is permitted to stand, it results in contrariety of opinion; hence, the writ of *certiorari* should issue.

AMANDA M. S. WHITFIELD,
By FRANK HAGERMAN,
Her Attorney.

STATE OF MISSOURI,
By HERBERT S. HADLEY,
Attorney General.

Received a copy of the foregoing petition for *certiorari*, and acknowledge service of notice that the same will be presented for hearing at the opening of court on April 23, 1906, or as soon thereafter as same can be heard.

_____,
Attorneys for Respondent.

BRIEF FOR PETITIONERS.

Question presented.

This is a petition for *certiorari* to the Circuit Court of Appeals of the Eighth Judicial Circuit, to have certified here a suit upon a policy of insurance for five thousand dollars upon the life of James Whitfield, who committed suicide, the courts below holding that it was lawful for the insurer to insert in its policy a provision that in case of suicide the recovery should only be for one-tenth of the insurance, notwithstanding that Sec. 7896 (Rev. Stat. of Mo. 1899), which was first enacted in 1879 (R. S. Mo. 1879, Sec. 5982; R. S. Mo. 1889, Sec. 5855), provided:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown, to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

II.

The statute is applicable to accident insurance.

In *Logan* v. *Fidelity & Casualty Co.*, 146 Mo., 114, it was held that the section applied to an accident policy issued by an accident company, and meant that if in any form or manner there was insurance upon life, then in case of suicide there was absolute liability.

III.

There can, in case of suicide, be no limitation in the amount of the recovery.

(*a*) The decisions below were directly opposed to the cases heretofore decided in the state and federal courts. That the amount of the liability cannot, in the case of suicide, be lessened, was explicitly decided in *Kellar* v. *Travelers Ins. Co.*, 58 Mo. App., 557, 561, the syllabus thus stating the decision:

"A provision in a policy of life insurance, which reduces the amount of the insurance in case of the suicide of the insured below that otherwise contracted for, makes the suicide a defense to the extent of the reduction, and is, therefore, contrary to the statute on the subject and invalid."

Among other things, Judge Bland said:

"The fact, that the premium warranted, and the policy guaranteed, full insurance in case of the death of the insured for any cause not specified in the clause set up in the defendant's answer, demonstrates that said clause was designed to modify the liability of the insurance company if the defendant committed suicide. It necessarily follows, if this stipulation as to a decreased liability in the event of death by suicide is enforced, that it is *some* defense to the otherwise full liability agreed upon in the policy. As the statute in question declares that suicide, not committed as therein set forth, is *'no defense,'* we cannot hold that the present stipulation can be enforced without violating the plain terms of a mandatory statute which the parties have no power to alter or abrogate. We do not see the force of the analogy attempted to be drawn by the learned counsel for appellant from the validity of limitations in policies of liability for death resulting from certain special causes, alcoholism, etc., other than suicide. The statute in question does not interdict stipulations as to such other causes of death to the assured, and there is no reason therefore why they may not be the subject of agreement in policies of insurance."

The trial (Rec., 23) and appellate (Rec., 36) courts conceded that this case was precisely in point, but said it was not binding because the decision was of a court of appeals and not by a court of last resort. In cases involving, as that did, less than twenty-five hundred dollars, the decision of that court is final, this

court having held it to be so far final in that a writ of error goes directly to it (*M., K. & T. R. Co.* v. *Elliott,* 184 U. S., 530, 534, 46 L. Ed., 673). It is true that the state court of appeals must follow the last controlling decision of the supreme court; nevertheless, until that court decides otherwise, a construction of a state statute by a state court of appeals is final, if made in a cause where its jurisdiction is final, and should be binding upon the federal courts. Prior to the decision in this case, it was the generally understood doctrine of the supreme court and of the federal courts that there could be no limitation in the amount of recovery in case of suicide, because, in *Logan* v. *Fidelity & Casualty Co.,* 146 Mo., 114, and *Berry* v. *Knights Templars etc. Co.,* 46 Fed Rep., 440, upon appeal 1 C. C. A., 561; 50 Fed Rep., 511; and *Jarman* v. *Knights Templars Assn.,* 95 Fed Rep., 70; 104 Fed. Rep., 638; 187 U. S., 199, 47 L. Ed., 139; 23 Sup. Ct. Rep., 108, the policies provided (and the provision was held invalid) that in case of suicide, the company should, in lieu of paying the full amount of the insurance, pay a sum equaling the premiums that had been paid to the company, which was no more of a limitation than is attempted in this case, where the explicit provision is that where death occurs by suicide only one-tenth of the insurance shall be paid.

Logan v. *Fidelity & Casualty Co.,* 146 Mo., 114, 118, 119, 124, 126, was from the court of last resort in Missouri. Both the trial (Rec., 23) and appellate (Rec., 36) courts said that the question here presented was not there involved. In this view there was error, as a brief review of the case will show.

The policy (p. 118) in the Logan case provided:

"In case of injuries, fatal or otherwise, wantonly inflicted upon himself by the assured; or inflicted upon himself, or received by him while insane, the measure of this company's liability shall be a sum equal to the premium paid, the same being agreed upon as in full liquidation of all claims under this policy."

The answer (p. 119) there averred:

"That the assured died by reason of a pistol shot wound in-

tentionally and wantonly inflicted upon himself and by his own hand, and that the death of said assured was caused while either sane or insane, in either of which events defendant was not liable except for the amount of the premiums paid."

The trial court (p. 120) there

"Instructed the jury to return a verdict for the plaintiff for the full amount of the policy with interest. From the judgment rendered upon the verdict returned in obedience to the court's instruction, after the usual motions and preliminaries, defendant has prosecuted its appeal to this court * * * ."

The opinion (p. 126) concluded with the words "The judgment of the circuit court will be affirmed." This was an express holding that the statute rendered unenforceable a provision in the policy limiting, in case of suicide, the amount of recovery to a sum equaling the premiums paid. If such was the conclusion there reached, it is of course binding in this jurisdiction.

In the report of *Berry* v. *Knights Templars etc. Co.*, 46 Fed. Rep., 439, 441, in the trial court it does not appear what the provision of the policy was; but an examination of the original record at Kansas City, shows the provision of the policy there in question was

"Or in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, state or province, or from any aerial voyage or trip; then and in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member, shall have no claims for benefits on this company. Provided, that *in the case of the suicide* of the holder of this policy, then *this company will pay* to his widow and heirs or devisees *such an amount on this policy as the member shall have paid to this company on this policy in assessments on the same, without interest.*"

Upon appeal (1 C. C. A., 561; 50 Fed. Rep., 511, 512, 515) notice was taken of the fact that the policy attempted to limit the amount of recovery in case of suicide to the premiums paid, as shown by these extracts from the opinion of Judge Shiras:

"The company refused to pay the *full amount named* in the

policy, *claiming* that by the express provisions of the policy, self-destruction by the insured, whether sane or insane, rendered the contract for the payment of $5,000 void, and *the company was only bound to pay the amount which had been paid in assessments by the insured.* This action was brought in the Circuit Court for the Western District of Missouri, to recover the full sum of $5,000. The case was tried to the court, a jury being waived. * * * Judgment in favor of plaintiffs having been entered for the *full* amount of the policy, the case was brought to this court upon writ of error. * * * In our judgment, the court below ruled correctly in holding that the policy sued on was a contract made in Missouri, and, as such, that the provisions of section 5982 are applicable thereto; and therefore the judgment is affirmed, at costs of plaintiff in error."

Though the reports of the case do not show, there was probably a similar provision in the policy involved in the Jarman case, because in Judge Sanborn's dissenting opinion (104 Fed. Rep., 638, 645, 647) there was this statement:

"The parties to this suit have stipulated that the insured, 'while insane to such an extent as to be incapable of understanding the nature of consequences of his act, took his own life,' and that, if section 5855 did 'not operate against the defendant company as to this action, the defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman,' *except to the extent of the repayment of his assessments, which amount to* $811.83. * * * The defense of the company that the insured took his own life while insane should be sustained, and the *recovery should be limited to the amount of the assessments which the insured paid to the company.*"

In that case here (187 U. S., 197, 200, 210, 47 L. Ed., 139, 143, 147) Mr. Justice Brown said that the contention of the company was that it was free

"* * * from all liability beyond that provided in the policy, 'that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount of his policy as the member shall have paid to this company on the policy in assessments on the same, without interest.' "

His conclusion was

"The judgment of the court below awarding the plaintiff the

full amount agreed upon in the policy, without damages, is accordingly affirmed."

(*b*) *Any other construction is an evasion of the statute which under familiar rules should be avoided.*

It is manifest that if the company can contract to pay only a part of the insurance in case of suicide, the whole virtue of the statute can be destroyed, and it will not do to say, as the trial judge did, that each case must in this respect be determined by the proposition whether there was an actual evasion of the statute. The trial court, instead of following the mandate of the statute that suicide should be no defense, construed the statute to mean that suicide may be a partial, but not a complete defense to a policy of insurance.

In this way, by indirection and in a circuitous manner, the object and purpose of the statute were defeated. This ought not to be permitted if settled rules of interpretation are to be followed.

In 26 A. & E. Enc. Law (2nd Ed.), 657, it is said:

"To carry out effectually the purpose of a statute it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined; courts must labor to suppress all subtle inventions and circumlocution by which the object and purpose of the law will be defeated."

In the Magdalen College Case, 11 Coke, 66, 76, speaking of a statute, the court said, it "has been always construed beneficially to prevent all inventions and evasions against the true intention of the same act."

In Endlich on Interpretation of Statutes, section 138, it is said:

"It is the duty of the judge to make such construction as shall suppress all evasions for the continuance of the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do or avoid, in an indirect or circuitous manner that which it has prohibited or enjoined. *In fraudem legis facit, qui, salvis, verbis legis, sententiam ejus circumvenit;* and a statute is understood as extending to all such circumventions and rendering them unavailing. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.* When the acts of the parties

are adopted for the purpose of effecting a thing which is prohibited and the thing prohibited is in consequence effected, the parties have done that which they have purposely caused, though they may have done it indirectly. When the thing done is substantially that which was prohibited, it falls within the act, simply because according to the true construction of the statute, it is the thing thereby prohibited. Whenever courts see such attempts at concealment, 'they brush away the cobweb varnish' and show the transaction in its true light. They see things as ordinary men do and see through them. Whatever might be the form or color of the transaction, the law looks to the substance of it."

Innumerable instances are given by the author in sections 138-143 where this rule has been applied.

In *Philpott* v. *St. George's Hospital,* 6 H. L. Cas., 338, 349, Lord Chancellor Cranworth said:

"Prohibitory statutes prevent you from doing something which formerly it was lawful for you to do, and whenever you can find that anything done that is substantially that which is prohibited, I think it is perfecly open to the court to say that that is void, not because it comes within the spirit of the statute or tends to effect the object which the statute meant to prohibit, but because by reason of the true construction of the staute, it is the thing, or one of the things actually prohibited."

(*c*) Both the trial (Rec., 23) and appellate (Rec., 34) courts denied that the statute established any substantial public policy. In this they erred.

In *Jarman* v. *Knights Templars, etc., Co.,* 95 Fed. Rep., 70, 72, 73, Judge Philips said:

"It is *something more* than a mere declaration of the state as to its public policy. * * * This statute became a constituent element of the contract itself between the parties, constituting a part of the consideration for entering into the contract; * * * it was the same as if it had been written into the face of th policy, that * * * defendant should not *plead* thereto that the insured committed suicide."

In the same case upon appeal (104 Fed. Rep., 638, 642, 643, Judge Thayer said, "the statute was worked into the contract * * * the parties must be presumed to have agreed that the in-

surer would assume the risk of death by suicide * * * it was deemed best to exclude the defense of suicide *altogether* in such actions."

When this case reached this court (187 U. S., 197, 204) it was here said that the statute created "an independent and binding obligation * * * overriding and nullifying any stipulation of the parties." In *Aetna Life Insurance Co.* v. *Florida,* 16 C. C. A., 618; 69 Fed. Rep., 932, 935, 936, Judge Thayer said: "The general purpose of the statute was to curtail the rights of insurance companies rather than to enlarge them." In *Berry* v. *Knights Templars, etc., Co.,* 46 Fed. Rep., 439, 441, Judge Caldwell said of the statute that "its very object was to prohibit and annul such stipulations in policies, and it cannot be * * * abrogated * * * *by any device whatever*" while upon appeal (1 C. C. A., 61, 50 Fed. Rep., 511, 513) it was said "the section in question was intended to establish a general rule applicable to the business of life insurance."

In *Christian* v. *Ins. Co.,* 143 Mo., 460, 466, Judge Sherwood said:

"* * * This section also becomes part and parcel of the policy of insurance, and that policy is consequently to be read as if that section had been therein inserted."

In *Logan* v. *Fidelity & Casualty Co.,* 146 Mo., 114, 122, 123, it was said:

"The section was enacted clearly to protect all policy holders of insurance on life against the defense that the insured committed suicide * * * so that the defense of suicide now is alike unavailing to all companies issuing policies upon the life of a citizen in this state, whether they be called life, accident or assessment insurance companies."

(*d*) Both the trial (Rec., 21-22) and appellate (Rec., 35) courts erroneously held that the statute in providing that suicide should not be a defense only meant that it should not be a complete defense, because, as the trial judge said, a defense was "a general assertion that plaintiff has no cause of action," and he was re-

quired to thus construe the word "defense" because section 4160 (Rev. Stats. 1899) provided:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import. * * *"

This construction was plainly repugnant to the intent of the legislature as well as to the context of the statute, hence according to the very terms of the section, should not have been adopted. There should have been applied the language the same judge used in *Jarman* v. *Knights Templars, etc., Co.*, 95 Fed. Rep., 70, 73, when he said that the policy should be construed as if there were written therein that "defendant should not *plead* thereto that the insured committed suicide;" and that used by Judge Thayer upon appeal in the same case (104 Fed. Rep., 638, 643) that the legislature "deemed best to exclude the defense of suicide *altogether* on such actions."

Section 4160 required the word "defense" to be taken in its plain or ordinary and usual sense and not in its strictly technical common law sense as was done below. The Supreme Court of Missouri held just to the contrary of the view taken below and held the words of the suicide statute must be taken in their ordinary and not in their technical sense, Judge Sherwood (*Christian* v. *Ins. Co.*, 143 Mo., 460, 469 saying:

"We have a statutory provision that in construing statutes, 'words and phrases shall be taken in their plain or ordinary and usual sense.' R. S. 1889, Sec. 6570. In a case of this sort, the statute is its own expositor. The legislature must be presumed to have intended what it has so clearly expressed, and this clause cuts off all resort to construction. Suth. Stat. Construct., Secs. 237-238."

According to all the authorities anything is a *defense* which *partially* diminishes a claim.

In 9 A. & E. Enc. Law (2d Ed.), 176, it is said:

"Although the term 'defense,' in its strictly technical sense, does not include a justification, but applies only to the denial of the complaint, *in common parlance* the word is used as applicable to any facts which defeat the action wholly or *partially*."

In a note there found (id.) this language is used:

"A *defense* is a right possessed by the defendant, arising out of facts alleged in his pleading, which wholly or *partially* defeats the plaintiff's claim. *Utah, etc., R. Co.* v. *Crawford*, 1 *Idaho*, 773. * * * "The word *defense* applies to every matter *tending to diminish* or entirely defeat the plaintiff's cause of action. *Baier* v. *Hempall*, 16 Neb., 128. A *defense* applies to all facts which defeat the action wholly or *partially*. *Kain* v. *Dickel*, 46 How. Pr. (N. Y. Super. Ct.), 208; *Stewart* v. *Travis*, 10 How. Pr. (N. Y. Supreme Ct.), 148; *Houghton* v. *Townsend*, 8 How. Pr. (N. Y. Supreme Ct.), 441; *Foland* v. *Johnson*, 16 Abb. Pr. (N. Y. Supreme Ct.), 235; *McKyring* v. *Bull*, 16 N. Y., 297; *U. S.* v. *Ordway*, 30 Fed. Rep., 32. * * * "So the term *defense* has been held to include a set-off. *Stewart* v. *Travis*, 10 How. Pr. (N. Y. Supreme Ct.), 148."

In *U. S.* v. *Ordway*, 30 Fed. Rep., 30, 32, it was said:

"The word 'defense' is a term of art. It comes from the Norman French, and was used in common-law pleading in the sense merely of denial. Rap. & L. Law Dict., 'Defense;' 1 Chitty, Pl., 462. Any new matter, then, which confesses and avoids the plaintiff's cause of action, either in whole or *in part*, and so far denies it, ought to be pleaded as a defense. *Bush* v. *Prosser*, 11 N. Y., 347; *McKyring* v. *Bull*, 16 N. Y., 297; Bliss, Pl., Sec. 327. * * * The demurrer to this defense is based on the proposition that neither good faith nor honesty of purpose is a defense to this action. * * * This defense covers at least twenty-three twenty-fourths of the damages claimed in this case, and, if established on the trial, will be a bar to the recovery thereof."

In *Baier* v. *Hempall*, 16 Neb., 128, 20 N. W. Rep., 108, the statute gave the right of appeal to one in default, who had a defense and in construing it the court said:

"The word 'defense' applies to every matter *tending to diminish* or entirely defeat the plaintiff's cause of action. This, perhaps, may be shown by cross-examination of the plaintiff's witnesses. Even if defendant has no affirmative proof to offer, he has the right

to cross-examine the witness of the adverse party, and in this way, if he can, *diminish* or defeat a recovery against himself."

The New York statute provides that an answer shall set forth any new matter constituting "a defense." In *Willis* v. *Taggart*, 6 How. Pr., 433, it was held that a plea of *partial* set-off was "clearly a *defense* as far as it goes." The doctrine was followed in *Stewart* v. *Taggart*, 10 How. Pr., 148, 151, where it was, among other things, said:

"New defense, *strictly* speaking, signifies an opposing or denial of the truth or validity of the complaint. * * * It is used in this sense by the English courts in their new rules of pleading * * * but the use of the words in these extracts 'statement of new matter constituting a defense (Sec. 149),' and 'new matter' 'constituting a defense to such new matter (Sec. 153).' must have been in the popular sense."

In *Houghton* v. *Townsend*, 8 How. Pr., 441, 442, 443, it was said:

"In common parlance the word defense is used as applicable to any facts which defeat the action, wholly or *partially*."

In *Kain* v. *Dickel*, 46 How. Pr., 208, it was said:

"Under the Code, *defenses* are to be set up by answer. * * * A defense applies to any facts which defeat the action wholly or *partially*."

In *Foland* v. *Johnson*, 16 Abb. Pr., 235, 239, it was held that "a *partial* defense may be set up by answer," and that the portion of an answer pleading in mitigation of damages constituted a defense within the meaning of the statute; the court saying that former rulings in that state to the contrary were overruled by *Bush* v. *Prosser*, 11 N. Y., 347; *McKyring* v. *Bull*, 16 N. Y., 297.

In *Bush* v. *Prosser*, 11 N. Y., 347, it was said that the Code in authorizing defense to be pleaded, recognized "the right to set up facts constituting either a total or *partial* defense to the action. * * * It is applied to matters which go to the *partial*, as well as to the total extinguishment of the plaintiff's claim, and the terms 'total' and 'partial' defense have become quite familiar and may

well be supposed to have been in the minds of the legislature when they speak of the 'grounds of defense' or 'the defenses' of a party to any action."

In *McKyring* v. *Bull*, 16 N. Y., 297, the same view was taken, the court, among other things, saying: "The word 'defense' as here used must include *partial* as well as complete defenses."

(*e*) The Circuit Court of Appeals was in error in saying that the statute should receive a restrictive construction. Such a view is directly opposed to the cases hereinbefore cited, wherein the doctrine has been repeatedly affirmed that the statute, being remedial, was to have the most liberal construction, and if this court were not bound by the decisions already rendered in the state courts, it should at least lean toward agreeing therewith. For, as said in *Burgess* v. *Seligman*, 107 U. S., 20, 27 L. Ed., 359, 365:

"But, even in such cases, for the sake of harmony, and to avoid confusion, the federal courts will lean toward an agreement of views with the state courts if the question seems to them balanced with doubt.

Respectfully submitted,

FRANK HAGERMAN,
Attorney for Plaintiff in Error.
HERBERT S. HADLEY,
Attorney General of the State of Missouri.

FILE COPY.

IN THE

UNITED STATES SUPREME COURT.

Supreme Court, U. S.
FILED.
FEB 23 1907
JAMES H. McKENNEY,
CLERK.

AMANDA M. S. WHITFIELD and the STATE OF MISSOURI, *ex rel.* HERBERT S. HADLEY, Attorney General,

Petitioners,

vs.

AETNA LIFE INSURANCE COMPANY of Hartford, Connecticut,

Respondent.

No. 258

UPON CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR PETITIONER.

FRANK HAGERMAN,
Attorney for Petitioner.
HERBERT S. HADLEY,
Attorney General of the State of Missouri.

John C. Bovard, Printer, 722 Wall St., K. C., Mo.

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AETNA LIFE INSURANCE COMPANY of Hartford, Connecticut,
Respondent.
} No. 258

UPON CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR PETITIONER.

STATEMENT.

(1) Petitioner, Amanda M. S. Whitfield, successfully petitioned this court to grant a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Judicial Circuit, to remove therefrom to this court for review the record in a case there pending numbered 2013, wherein she was plaintiff in error and respondent was defendant in error.

The State of Missouri, at the relation of Herbert S. Hadley, Attorney General, joined in that petition so that the state might be permitted to intervene in the interest of the public and upon behalf

of thousands of policy holders who have, since 1879, taken out policies of insurance upon the faith of the validity of the law, which, as construed below, destroys the legislative policy of the state as it has existed for the past twenty-seven years and may impair the policies so taken out. Since then an intervening petition has been filed and is presented herewith.

(2) The case is this:

(*a*) Amanda M. S. Whitfield, widow of James Whitfield, deceased, as plaintiff, sued (Petition, Rec., 3-9) the Aetna Life Insurance Company of Hartford, Connecticut, as defendant, for *five thousand* dollars upon a policy of insurance (Rec., 3-7) upon the life of her deceased husband, providing for payment "if death results * * * of the principal sum of five thousand * * * dollars," but "in event of death * * * due to suicide" one-tenth thereof. The company defended (Ans., Rec., 10-11) upon the sole ground that death occurred by suicide and under the terms of the policy *the recovery was limited to one-tenth of the amount of insurance.* A jury was waived (Stipulation, Rec., 13) and the case submitted upon an agreed statement of facts (Rec., 14-15), which was incorporated into a special finding of fact (Rec., 14-15) to the effect that the defendant, in Missouri, insured her husband, James Whitfield, of Kansas City, therein, who there committed suicide during the life of the policy, the defendant admitting its liability, but claiming the extent of the recovery could not, under the policy, exceed five hundred dollars, whereas plaintiff claimed that the defendant could not legally insert in its policy a provision lessening the amount of recovery in case of suicide, because the state statute (R. S. Mo., 1899, Sec. 7896) provided that "it shall be *no defense* that the insured committed suicide * * * *and any stipulation in the policy to the contrary shall be void.*" The trial court adopted the view that such limitation was valid (Judgment, Rec., 14-15; Opinion, Rec.. 19-22, 125 Fed. Rep., 269), which upon the plaintiff's writ of error (Rec., 1) the Circuit Court of Appeals affirmed (Opinion, Rec., 26-34, 144 Fed. Rep., 356).

(*b*) The state statute (R. S. Mo., 1899, Sec. 7896), which has been continuously in force since its first enactment in 1879 (R. S. Mo., 1879, Sec. 5982; R. S. Mo., 1889, Sec. 5855), provides:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown, to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

(*c*) Both the trial (Rec., 20) and appellate (Rec., 32) courts held that the statute only meant that suicide could not be a *complete* defense, and that it was lawful for the policy to provide for a *partial* defense to the extent of reducing the amount of recovery in case of suicide.

(*d*) The St. Louis Court of Appeals, after full discussion, expressly held (*Keller* v. *Travelers Insurance Co.*, 58 Mo. App., 557, 561) to the contrary. The Supreme Court of Missouri (*Logan* v. *Fidelity & Casualty Co.*, 146 Mo., 114), and several federal courts (*Berry* v. *Knights Templars*, 46 Fed. Rep., 439, 441; upon appeal, 1 C. C. A., 561, 50 Fed. Rep., 511, 512, 513; *Jarman* v. *Knights Templars Assn.*, 95 Fed. Rep., 70; upon appeal 44 C. C. A., 93, 104 Fed. Rep., 638; upon *certiorari*, 187 U. S., 199, 47, L. Ed., 139), in upholding the statute, have held invalid provisions that in case of suicide the measure of liability should be a sum equal to the amount of premiums paid. The Circuit Court of Appeals rejected the doctrine of these cases because it was of opinion that in these latter cases there was no particular discussion of that precise point, but said that while the question was expressly decided by the St. Louis Court of Appeals, yet the opinion was not binding, because it was not from the highest court in the state, although, in that particular case, on account of the amount involved. it was the court of last resort, whose decision was so far final that a writ of error from this court would have run directly to it (*M., K. & T. R. Co.*, v. *Elliott*, 184 U. S., 530, 534, 46 L. Ed., 673).

(*e*) The question presented is of great public interest; the enforcement of the legislative policy of the state is at stake, the validity of thousands of outstanding policies involved, all which is fully shown by the intervening petition filed by the state to which reference is now made.

ARGUMENT FOR PETITIONERS.

I.

Question presented.

This suit upon a policy of insurance for five thousand dollars upon the life of James Whitfield, who committed suicide, presents the single question whether the courts below erred in holding that it was lawful for the insurer to insert in its policy a provision that in case of suicide the recovery should only be for one-tenth of the insurance, notwithstanding that section 7896 (Rev. Stat. of Mo., 1899), which was first enacted in 1879 (R. S. Mo., 1879, Sec. 5982; R. S. Mo., 1889, Sec. 5855), provided:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown, to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

II.

The statute is applicable to accident insurance.

In *Logan* v. *Fidelity & Casualty Co.*, 146 Mo., 114, it was held that the section applied to an accident policy issued by an accident company, and meant that if in any form or manner there was insurance upon life, then in case of suicide there was absolute liability.

III.

There can, in case of suicide, be no limitation in the amount of the recovery.

(a) The decisions below were directly opposed to the cases heretofore decided in the state and federal courts. That the amount of the liability cannot, in the case of suicide, be *lessened*, was explicitly decided in *Kellar* v. *Travelers Ins. Co.*, 58 Mo. App., 557, 561, the syllabus thus stating the decision:

"A provision in a policy of life insurance, which reduces the amount of the insurance in case of the suicide of the insured below that otherwise contracted for, makes the suicide a defense to the extent of the reduction, and is, therefore, contrary to the statute on the subject and invalid."

Among other things, Judge Bland said:

"The fact, that the premium warranted, and the policy guaranteed, full insurance in case of the death of the insured for any cause not specified in the clause set up in the defendant's answer, demonstrates that said clause was designed to modify the liability of the insurance company if the defendant committed suicide. It necessarily follows, if this stipulation as to a decreased liability in the event of death by suicide is enforced, that it is *some* defense to the otherwise full liability agreed upon in the policy. As the statute in question declares that suicide, not committed as therein set forth, is *'no defense,'* we cannot hold that the present stipulation can be enforced without violating the plain terms of a mandatory statute which the parties have no power to alter or abrogate. We do not see the force of the analogy attempted to be drawn by the learned counsel for appellant from the validity of limitations in policies of liability for death resulting from certain special causes, alcoholism, etc., other than suicide. The statute in question does not interdict stipulations as to such other causes of death to the assured, and there is no reason therefore why they may not be the subject of agreement in policies of insurance."

The trial (Rec., 21-22) and appellate (Rec., 33) courts conceded that this case was precisely in point, but said it was not binding because the decision was of a court of appeals and not by a court of last resort. In cases involving, as that did, less than

twenty-five hundred dollars, the decision of that court is final, this court having held it to be so far final in that a writ of error goes directly to it (*M., K. & T. R. R. Co.*, v. *Elliott*, 184 U. S., 530, 534, 46 L. Ed., 673). It is true that the Court of Appeals must follow the last controlling decision of the Supreme Court; nevertheless, until that court decides otherwise, a construction of a state statute by a state Court of Appeals is final, as hereinafter shown, if made in a cause where its jurisdiction is final, and should be binding upon the federal courts, and such is the fair result of the decision here made in the Elliott case.

(*b*) Prior to the decision in this case, it was the generally understood doctrine of the Supreme Court of the state and of the federal courts that there could be no limitation in the amount of recovery in case of suicide, because, in *Logan* v. *Fidelity & Casualty Co.*, 146 Mo., 114; *Berry* v. *Knights Templars, etc., Co.*, 46 Fed. Rep., 440, upon appeal 1 C. C. A., 561, 50 Fed. Rep., 511, and *Jarman* v. *Knights Templars Assn.*, 95 Fed. Rep., 70, 44 C. C. A., 93, 104 Fed. Rep., 638, 187 U. S., 199, 47 L. Ed., 139, 23 Sup. Ct. Rep., 108, the policies provided (and the provision was held invalid) that in case of suicide the company should, in lieu of paying the full amount of the insurance, pay a sum equaling the premiums that had been paid to the company, which was no more of a limitation than was here attempted, where the explicit provision is that where death occurs by suicide only one-tenth of the insurance shall be paid.

Logan v. *Fidelity & Casualty Co.*, 146 Mo., 114, 118, 119, 124, 126, was from the court of last resort in Missouri. Both the trial (Rec., 21) and appellate (Rec., 33) courts said that the question here presented was not there involved. In this view there was error, as a brief review of the case will show.

The policy (p. 118) in the Logan case provided:

"In case of injuries, fatal or otherwise, wantonly inflicted upon himself by the assured; or inflicted upon himself, or received by

him while insane, the measure of this company's liability shall be a sum equal to the premium paid, the same being agreed upon as in full liquidation of all claims under this policy."

The answer (p. 119) there averred:

"That the assured died by reason of a pistol shot wound intentionally and wantonly inflicted upon himself and by his own hand, and that the death of said assured was caused while either sane or insane, in either of which events defendant was not liable except for the amount of the premiums paid."

The trial court (p. 120) there

"Instructed the jury to return a verdict for the plaintiff for the *full amount* of the policy with interest. From the judgment rendered upon the verdict returned in obedience to the court's instruction, after the usual motions and preliminaries, defendant has prosecuted its appeal to this court * * * ."

The opinion (p. 126) concluded with the words "The judgment of the circuit court will be affirmed." This was an express holding that the statute rendered unenforcible a provision in the policy limiting, in case of suicide, the amount of recovery to a sum equaling the premiums paid. If such was the conclusion there reached, it is of course binding in this jurisdiction.

In the report of *Berry* v. *Knights Templars, etc., Co.*, 46 Fed. Rep., 439, 441, in the trial court it does not appear what the provision of the policy was; but an examination of the original record at Kansas City, shows the provision of the policy there in question was

"Or in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or insane, or in case of his death resulting from any violation of the laws of any nation, state or province, or from any aerial voyage or trip; then and in each and every of the foregoing cases, this policy shall become null and void, and the widow and heirs or devisees of said member, shall have no claims for benefits on this company. Provided, that *in the case of the suicide* of the holder of this policy, then *this company will pay* to his widow and heirs or devisees *such an amount on this policy as the member shall have paid to this company on this policy in assessments on the same, without interest.*"

Upon appeal (1 C. C. A., 561; 50 Fed. Rep., 511, 512, 515) notice was taken of the fact that the policy attempted to limit the amount of recovery in case of suicide to the premiums paid, as shown by these extracts from the opinion of Judge Shiras:

"The company refused to pay the *full amount named* in the policy, *claiming* that by the express provisions of the policy, self-destruction by the insured, whether sane or insane, rendered the contract for the payment of $5,000 void, and *the company was only bound to pay the amount which had been paid in assessments by the insured.* This action was brought in the Circuit Court for the Western District of Missouri, to recover the full sum of $5,000. The case was tried to the court, a jury being waived. * * * Judgment in favor of plaintiffs having been entered for the *full* amount of the policy, the case was brought to this court upon writ of error. * * * In our judgment, the court below ruled correctly in holding that the policy sued on was a contract made in Missouri, and, as such, that the provisions of section 5982 are applicable thereto; and therefore the judgment is affirmed, at costs of plaintiff in error."

There was a similar provision in the policy involved in *Jarman v. Knights Templars Ass'n,* (44 C. C. A., 93, 95 Fed. Rep., 70; 104 Fed. Rep., 638; 187 U. S., 199, 47 L. Ed., 139), because in Judge Sanborn's dissenting opinion (44 C. C. A., 93, 104 Fed. Rep., 638, 645, 647), there was this statement:

"'The parties to this suit have stipulated that the insured, 'while insane to such an extent as to be incapable of understanding the nature of consequences of his act, took his own life,' and that, if section 5855 did 'not operate against the defendant company as to this action, the defendant company is relieved from the payment of the policy aforesaid by the self-destruction of John P. Jarman,' *except to the extent of the repayment of his assessments, which amount to* $811.83. * * * The defense of the company that the insured took his own life while insane should be sustained, and the *recovery should be limited to the amount of the assessments which the insured paid to the company.*"

In that case here (187 U. S., 197, 200, 210, 47 L. Ed., 139, 143, 147), Mr. Justice Brown said that the contention of the company was that it was free

"* * * * from all liability *beyond that provided in the pol-*

icy, 'that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount of his policy as the member shall have paid to this company on the policy in assessments on the same, without interest.'"

His conclusion was

"The judgment of the court below awarding the plaintiff the *full* amount agreed upon in the policy, without damages, is accordingly affirmed."

(c) *Any other construction is an evasion of the statute which under familiar rules should be avoided.*

It is manifest that if the company can contract to pay only a part of the insurance in case of suicide, the whole virtue of the statute can be destroyed, and it will not do to say, as the trial judge did, that each case must in this respect be determined by the proposition whether there was an actual evasion of the statute. The trial court, instead of following the mandate of the statute that suicide should be no defense, construed the statute to mean that suicide may be a partial, but not a complete defense to a policy of insurance.

In this way, by indirection and in a circuitous manner, the object and purpose of the statute were defeated. This ought not to be permitted if settled rules of interpretation are to be followed.

In 26 A. & E. Enc. Law (2nd Ed.), 657, it is said:

"To carry out effectually the purpose of a statute it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined; courts must labor to suppress all subtle inventions and circumlocution by which the object and purpose of the law will be defeated."

In the Magdalen College Case, 11 Coke, 66, 76, speaking of a statute, the court said, it "has been always construed beneficially to prevent all inventions and evasions against the true intention of the same act."

In Endlich on Interpretation of Statutes, section 138, it is said:

"It is the duty of the judge to make such construction as shall suppress all evasions for the continuance of the mischief. To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do or avoid, in an indirect or circuitous manner that which it has prohibited or enjoined. *In fraudem legis facit, qui, salvis, verbis legis, sententiam ejus circumvenit;* and a statute is understood as extending to all such circumventions and rendering them unavailing. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.* When the acts of the parties are adopted for the purpose of effecting a thing which is prohibited and the thing prohibited is in consequence effected, the parties have done that which they have purposely caused, though they may have done it indirectly. When the thing done is substantially that which was prohibited, it falls within the act, simply because according to the true construction of the statute, it is the thing thereby prohibited. Whenever courts see such attempts at concealment, 'they brush away the cobweb varnish' and show the transaction in its true light. They see things as ordinary men do and see through them. Whatever might be the form or color of the transaction, the law looks to the substance of it."

Innumerable instances are given by the author in sections 138-143 where this rule has been applied.

In *Philpott* v. *St. George's Hospital*, 6 H. L. Cas., 338, 349, Lord Chancellor Cranworth said:

"Prohibitory statutes prevent you from doing something which formerly it was lawful for you to do, and whenever you can find that anything done that is substantially that which is prohibited, I think it is perfectly open to the court to say that that is void, not because it comes within the spirit of the statute or tends to effect the object which the statute meant to prohibit, but because by reason of the true construction of the statute, it is the thing, or one of the things actually prohibited."

(*d*) Both the trial (Rec., 22) and appellate (Rec., 31) courts denied that the statute established any substantial public policy. In this they erred.

In *Jarman* v. *Knights Templars, etc., Co.*, 95 Fed. Rep., 70, 72, 73, Judge Phillips said:

"It is *something more* than a mere declaration of the state as to its public policy. * * * This statute became a constituent element of the contract itself between the parties, constituting a

part of the consideration for entering into the contract; * * * it was the same as if it had been written into the face of the policy, that * * * defendant should not *plead* thereto that the insured committed suicide."

In the same case upon appeal (104 Fed. Rep., 638, 642, 643, Judge Thayer said, "the statute was worked into the contract * * * the parties must be presumed to have agreed that the insurer would assume the risk of death by suicide * * * it was deemed best to exclude the defense of suicide *altogether* in such actions."

When this case reached this court (187 U. S., 197, 204), it was here said that the statute created "an independent and binding obligation * * * overriding and nullifying any stipulation of the parties." In *Aetna Life Insurance Co.* v. *Florida,* 16 C. C. A., 618; 69 Fed. Rep., 932, 935, 936, Judge Thayer said: "The general purpose of the statute was to curtail the rights of insurance companies rather than to enlarge them." In *Berry* v. *Knights Templars, etc., Co.,* 46 Fed. Rep., 439, 441, Judge Caldwell said of the statute that "its very object was to prohibit and annul such stipulations in policies, and it cannot be * * * abrogated * * * *by any device whatever*" while upon appeal (1 C. C. A., 61, 50 Fed. Rep., 511, 513) it was said "the section in question was intended to establish a general rule applicable to the business of life insurance."

In *Christian* v. *Ins. Co.,* 143 Mo., 460, 466, Judge Sherwood said:

"* * * This section also becomes part and parcel of the policy of insurance, and that policy is consequently to be read as if that section had been therein inserted."

In *Logan* v. *Fidelity & Casualty Co.,* 146 Mo., 114, 122, 123, it was said:

"The section was enacted clearly to protect all policy holders of insurance on life against the defense that the insured committed suicide * * * so that the defense of suicide now is alike unavailing to all companies issuing policies upon the life of a citizen in this state, whether they be called life, accident or assessment insurance companies."

(*e*) Both the trial (Rec., 20) and appellate (Rec., 32) courts eroneously held that the statute in providing that suicide should not be a defense only meant that it should not be a complete defense, because, as the trial judge said, a defense was "a general assertion that plaintiff has no cause of action," and he was required to thus construe the word "defense" because section 4160 (Rev. Stats. 1899) provided:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import. * * *"

This construction was plainly repugnant to the intent of the legislature as well as to the context of the statute, hence according to the very terms of the section, should not have been adopted. There should have been applied the language the same judge used in *Jarman* v. *Knights Templars, etc., Co.*, 95 Fed. Rep., 70, 73, when he said that the policy should be construed as if there were written therein that "defendant should not *plead* thereto that the insured committed suicide;" and that used by Judge Thayer upon appeal in the same case (104 Fed. Rep., 638, 643), that the legislature "deemed best to exclude the defense of suicide *altogether* on such actions."

Section 4160 required the word "defense" to be taken in its plain or ordinary and usual sense and not in its strictly technical common law sense as was done below. The Supreme Court of Missouri held just to the contrary of the view taken below and held the words of the suicide statute must be taken in their ordinary and not in their technical sense, Judge Sherwood (*Christian* v. *Ins. Co.*, 143 Mo., 460, 469), saying:

"We have a statutory provision that in construing statutes, 'words and phrases shall be taken in their plain or ordinary and usual sense.' R. S. 1889, Sec. 6570. In a case of this sort, the

statute is its own expositor. The legislature must be presumed to have intended what it has so clearly expressed, and this clause cuts off all resort to construction. Suth. Stat. Construct., Secs. 237-238."

According to all the authorities anything is a *defense* which *partially* diminishes a claim.

In 9 A. & E. Enc. Law (2d Ed.), 176, it is said:

"Although the term 'defense,' in its strictly technical sense, does not include a justification, but applies only to the denial of the complaint, *in common parlance* the word is used as applicable to any facts which defeat the action wholly or *partially*."

In a note there found (id.) this language is used:

"A *defense* is a right possessed by the defendant, arising out of facts alleged in his pleading, which wholly or *partially* defeats the plaintiff's claim. *Utah, etc., R. Co.* v. *Crawford,* 1 Idaho, 773. * * * The word *defense* applies to every matter *tending to diminish* or entirely defeat the plaintiff's cause of action. *Baier* v. *Hempall,* 16 Neb., 128. A *defense* applies to all facts which defeat the action wholly or *partially*. *Kain* v. *Dickel,* 46 How. Pr. (N. Y. Super. Ct.), 208; *Stewart* v. *Travis,* 10 How. Pr. (N. Y. Supreme Ct.), 148; *Houghton* v. *Townsend,* 8 How. Pr. (N. Y. Supreme Ct.), 441; *Foland* v. *Johnson,* 16 Abb. Pr. (N. Y. Supreme Ct.), 235; *McKyring* v. *Bull,* 16 N. Y., 297; *U. S.* v. *Ordway,* 30 Fed. Rep., 32. * * * So the term *defense* has been held to include a set-off. *Stewart* v. *Travis,* 10 How. Pa. (N. Y. Supreme Ct.), 148."

In *U. S.* v. *Ordway,* 30 Fed. Rep., 30, 32, it was said:

"The word 'defense' is a term of art. It comes from the Norman French, and was used in common-law pleading in the sense merely of denial. Rap. & L. Law Dict., 'Defense;' 1 Chitty, Pl., 462. Any new matter, then, which confesses and avoids the plaintiff's cause of action, either in whole or *in part,* and so far denies it, ought to be pleaded as a defense. *Bush* v. *Prosser,* 11 N. Y., 347; *McKyring* v. *Bull,* 16 N. Y., 297; Bliss, Pl., Sec. 327. * * * The demurrer to this defense is based on the proposition that neither good faith nor honesty of purpose is a defense to this action. * * * This defense covers at least twenty-three twenty-fourths of the damages claimed in this case, and, if established on the trial, will be a bar to the recovery thereof."

In *Baier* v. *Hempall,* 16 Neb., 128, 20 N. W. Rep., 108, the

statute gave the right of appeal to one in default, who had a defense and in construing it the court said:

"The word 'defense' applies to every matter *tending to diminish* or entirely defeat the plaintiff's cause of action. This, perhaps, may be shown by cross-examination of the plaintiff's witnesses. Even if defendant has no affirmative proof to offer, he has the right to cross-examine the witness of the adverse party, and in this way, if he can, *diminish* or defeat a recovery against himself."

The New York statute provides that an answer shall set forth any new matter constituting "a defense." In *Willis* v. *Taggart*, 6 How. Pr., 433, it was held that a plea of *partial* set-off was "clearly a *defense* as far as it goes." The doctrine was followed in *Stewart* v. *Taggart*, 10 How. Pr., 148, 151, where it was, among other things, said:

"New defense, *strictly* speaking, signifies an opposing or denial of the truth or validity of the complaint. * * * It is used in this sense by the English courts in their new rules of pleading * * * but the use of the words in these extracts 'statement of new matter constituting a defense (Sec. 149),' and 'new matter' 'constituting a defense to such new matter (Sec. 153).' must have been in the popular sense."

In *Houghton* v. *Townsend*, 8 How. Pr., 441, 442, 443, it was said:

"In common parlance the word defense is used as applicable to any facts which defeat the action, wholly or *partially*."

In *Kain* v. *Dickel*, 46 How. Pr., 208, it was said:

"Under the Code, *defenses* are to be set up by answer. * * * A defense applies to any facts which defeat the action wholly or *partially*."

In *Poland* v. *Johnson*, 16 Abb. Pr., 235, 239, it was held that "a *partial* defense may be set up by answer," and that the portion of an answer pleading in mitigation of damages constituted a defense within the meaning of the statute; the court saying that former rulings in that state to the contrary were overruled by *Bush* v. *Prosser*, 11 N. Y., 347; *McKyring* v. *Bull*, 16 N. Y., 297.

In *Bush* v. *Prosser,* 11 N. Y., 347, it was said that the Code in authorizing defense to be pleaded, recognized "the right to set up facts constituting either a total or *partial* defense to the action. * * * It is applied to matters which go to the *partial,* as well as to the total extinguishment of the plaintiff's claim, and the terms 'total' and 'partial' defense have become quite familiar and may well be supposed to have been in the minds of the legislature when they speak of the 'grounds of defense' or 'the defenses' of a party to any action."

In *McKyring* v. *Bull,* 16 N. Y., 297, the same view was taken, the court, among other things, saying: "The word 'defense' as here used must include *partial* as well as complete defenses."

(*f*) The Circuit Court of Appeals was in error in saying that the statute should receive a restrictive construction. Such a view is directly opposed to the cases hereinbefore cited, wherein the doctrine has been repeatedly affirmed that the statute, being remedial, was to have the most liberal construction, and if this court were not bound by the decisions already rendered in the state courts, it should at least lean toward agreeing therewith. For, as said in *Burgess* v. *Seligman,* 107 U. S., 20, 27 L. Ed., 359, 365:

"But, even in such cases, for the sake of harmony, and to avoid confusion, the federal courts will lean toward an agreement of views with the state courts if the question seems to them balanced with doubt."

(*g*) Respondent's argument below was based upon the erroneous premise that there was here no general insurance in a fixed sum with a condition or exception that in case of suicide there should be some deduction in amount. The contention was that there was direct insurance for $5,000.00 in some contingencies, and for $500.00 in case of suicide, which was not in any sense, general insurance for $5,000.00 with an exception or condition for the payment of $500.00 in case of suicide. This refined reasoning is based upon a misapprehension. The policy is general against death in the sum of $5,000.00. This was by the policy called "the principal sum." A condition of, or exception to the policy was that in case

of suicide, there should be a deduction of $4,500.00; a casual reading of the policy so shows. Omitting the immaterial parts, it reads:

"TWENTIETH CENTURY COMBINATION.

"PRINCIPAL SUM $5,000.00. ACCIDENT POLICY * * *

"The Aetna Life Insurance Company, of Hartford, Conn. * * * does hereby insure James Whitfield of the town of Kansas City, County of Jackson, State of Missouri, under Classification Preferred, being a Sporting Editor K. C. Star by occupation. * * * against loss of time resulting from bodily injuries effected during the term of this insurance, through external, violent, and accidental means. * * * (*a*) If such injuries alone result within ninety days in loss by removal of both hands at or above the wrists, or both feet at or above the ankles, or one hand and one foot at those places, or the irrecoverable loss of the entire sight of both eyes, then the insured shall be paid the *Full Principal Sum,* insured in lieu of weekly indemnity as herein provided, and this policy shall thereupon cease and be surrendered to the company. (*b*) If such injuries alone result within ninety days in loss by removal of right hand at or above the wrist, or either leg at or above the knee, the Insured *shall be paid one-half the principal sum insured,* in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company. (*c*) If such injuries alone result within ninety days in loss by removal of the left hand at or above the wrist, or either foot at or above the ankle, the insured *shall be paid one-fifth the principal sum insured,* in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company. (*d*) If such injuries alone result within ninety days in the irrecoverable loss of the entire sight of one eye, the insured *shall be paid one-eighth the principal sum insured,* in lieu of weekly indemnity as herein provided. (*e*) If death result solely from such injuries within ninety days the said company *will pay the principal sum of five thousand no*-100 *dollars* to Amanda M. S. Whitfield, his wife, if living; and in the event of the death of the said beneficiary before the death of the insured, to the executors, administrators, or assigns of the insured. (*f*) If injuries are sustained by means as aforesaid, (1) while the insured is riding as a passenger in or on any public passenger conveyance, using steam, compressed air, gasoline, cable or electricity as a motive power, or (2) while riding in a regular passenger elevator, or (3) while riding a bicycle (not in a race for prize or purse concerning which risk, see condition two) or (4) in consequence of the burning of a building in which the insured shall be at the commencement of the fire, the amount to be paid shall be double the sum specified in the clause under which claim is made, subject to all the conditions of this policy.

"This policy is issued and accepted subject to the following conditions: * * *

"2. If the insured is injured in any occupation or exposure classed by this company higher than the premium paid for this policy covers, *the principal sum insured* and weekly indemnity shall be only such amounts as said premium will purchase at the rate fixed for such increased hazard. If accidentally injured while riding a bicycle in a race for prize or purse, the amounts payable will be one-third of the double benefits provided by clause 'f' hereof. * * *

"4. In event of death, loss of limb or sight, or disability due to sunstroke or freezing; or due to unnecessary exposure to obvious risk or injury or obvious danger; or due to contact with poisonous substances other than to the septic poisoning of wounds accidentally inflicted; or due to hernia, the result of an accident happening subsequent to the issue of this policy; or in event of death following bodily injuries of which there existed no external or visible mark upon the body of contusion or wound sufficient to cause death (accidental drowning only excepted) and an autopsy showed that such injuries contributed materially to the death of the insured, then in all such cases referred to in this paragraph, the limit of this company's liability shall be one-fifth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

"5. *In event of death,* loss of limb or sight, or disability due to injuries intentionally inflicted upon the insured by another person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries intentionally inflicted upon the insured by himself; or *due to suicide, sane or insane;* or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influence of intoxicants or narcotics, then in all such cases referred to in this paragraph, *the limit of this Company's liability shall be one-tenth the amount otherwise payable under this policy,* anything to the contrary in this policy notwithstanding."

In clause "f," the limit of recovery is $10,000.00. The suit might have been brought for that amount, but the reasonable construction was adopted by the pleader that the policy was in reality for $5,000.00, and the only exception thereto was that in case of suicide the insurance should be for $500.00. If it be material, the policy should be so construed, even if it were doubtful as to what was meant, for every doubt is to be resolved against the company

in favor of the assured. (*Orient, etc., Co.* v. *Wright,* 1 Wallace, 456; *Kentucky, etc., Co.* v. *Hamilton,* 63 Fed., 100; *Palatine Ins. Co.* v. *Ewing,* 92 Fed., 114.) As said by Mr. Justice Miller in the first of the foregoing cases: "The rule is that when in such cases the language requires construction, it shall be taken most strongly against the party making the instrument."

In *Liverpool, etc., Co.* v. *Kearney,* 180 U. S., 132; 45 L. Ed., 460, 462, Mr. Justice Harlan said:

"To the general rule there is an apparent exception in the case of contracts of insurance; namely, that where a policy of insurance is so framed as to leave room for two constructions the words used should be interpreted most strongly against the insurer. This exception rests upon the ground that the company's attorneys, officers, or agents prepared the policy, and it is its language that must be interpreted."

But if the policy could be construed to be direct insurance for $500.00 in case of suicide, and the clause in reference to suicide not a condition or exception to the policy, still it is manifest that there is an evasion of the statute, and the argument is unavailable.

(*h*) It is said that the decisions of the state courts are not controlling upon the question here presented.

It is and must be conceded that the construction of this statute by the highest court of the state is controlling here (*Knight Templars Ass'n* v. *Jarman,* 187 U. S., 197, 204; 23 Sup. Ct. Rep., 108, 111). But it is contended that the supreme court of the state has not decided the question. *Logan* v. *Fidelity Ins. Co.,* 146 Mo., 114, 118, 119, 124, 126, was from that court, and as already seen necessarily decided that a clause was invalid which in case of suicide limited the recovery to the premiums paid. There is no difference in principle between limiting the recovery to the amount of premiums paid and limiting it to a specific sum of money. It ought, therefore, to be said that the highest court of the state has already construed this statute in accordance with our construction, which construction is that which has been adopted by the profession and

accepted by this court. (*Berry* v. *Knight Templars, etc., Ass'n*, 40 Fed. Rep., 439, 441; same case on appeal, 1 C. C. A., 561; 50 Fed. Rep., 511, 512, 513; *Knight Templars Ass'n.* v. *Jarman*, 104 Fed. Rep., 638, 645, 647; 187 U. S., 199, 47 L. Ed., 139.)

It was coneded below that *Keller* v. *Travelers Insurance Co.*, 58 Mo. App., 557, 561, is precisely in point, but as already seen it was said that this was a decision of the court of appeals and not by a court of last resort. In cases involving less than $2,500.00, the decision of that court is final. It has been held to be so far final in such cases that a writ of error goes directly to it from the Supreme Court of the United States. (*M., K. & T. Ry. Co.* v. *Elliott*, 184 U. S., 534.) It is true that the Court of Appeals must follow the last controlling decision of the Supreme Court; nevertheless, until that court decides otherwise, a construction of the state statute by the State Court of Appeals is final, if made in a case where its jurisdiction is final, and should be binding here.

Respectfully submitted,

FRANK HAGERMAN,
Attorney for Petitioner.
HERBERT S. HADLEY,
Attorney General of the State of Missouri.

In the United States Supreme Court.

AMANDA M. S. WHITFIELD AND THE STATE OF MISSOURI, *ex rel.* HERBERT S. HADLEY, ATTORNEY GENERAL,

Petitioners,

v.

ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT,

Respondent.

No. 258.

Upon Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

REPLY BRIEF FOR PETITIONER.

I.

The Circuit Court of Appeals intimated, without holding, that the Missouri statute only applied to an accident policy where the assured committed suicide while insane, because then only was there an accident.

Counsel seize and enlarge upon this suggestion, which really is the basis of the many misapprehensions below. In Logan *v.* Fidelity and Casualty Co. 146 Mo. 114, 119, 122, 123, 124, 126 the court said (p. 119) that the defense was, that death occurred by a pistol shot fired by the assured "while *either sane* or insane, in *either* of which events defendant was not liable except for the amount of the premiums paid ***." The opinion then holds (pp. 119, 122, 123, 124, 126) that the purpose of the statute was to create absolute liability if there was insurance against death in any contingency, and that the provisions in the policy as to *accidental* injuries did not affect the question.

In the Jarman case (44 C. C. A. 93, 104 Fed. Rep. 638, 642, 645) the question was whether the statute applied to a suicide by an insane person. The majority of the court, Judge Sanborn dissenting, held that it did. Here (187 U. S. 197, 199–202) Mr. Justice Brown in a vigorous opinion agreed with the majority below, among other things saying:

> "But we are of opinion that the word 'suicide' is not used in this statute in its technical and legal sense of self destruction by a sane person, but according to its popular meaning of death by one's own hand, *irrespective of the mental condition of the person committing the act.*"

II.

But defendant in error is in no position to assert this claim here, because the reply set forth (Rec. 17) that the suicide was committed while the insured was insane, and upon motion of defendant in error, (*id.*) this was stricken out, plaintiff in error at the time excepting and preserving (*id.*) a bill of exceptions. After having asked

to have stricken out the averment that the assured was *insane*, defendant in error cannot now assume the inconsistent position that the statute only applies in such a contingency. No rule is better settled than that a party cannot upon appeal occupy a position inconsistent with that adopted below, otherwise a party could "tread back and trip up the heels of the plaintiff on a defect which he would seem thus purposely to have omitted to notice in the outset of the controversy" (Holmes *v.* Braidwood 82 Mo. 610, 617; Slack *v.* Lyon 9 Pick 65).

III.

Ritter *v.* Mutual Life Ins. Co. 169 U. S. 139, is here and was below made the basis of an argument, that the statute is against public policy, but as pointed out in the Jarman case (187 U. S. 197, 201) when discussing the same question and reaching a different conclusion, the Ritter case applied to a contract, the court's ideas of public policy, but a statute like that in question in and of itself declared a public policy which no court could ignore.

IV.

If reversed, the case should be remanded with directions to enter judgment upon the findings for $5,000.00, with lawful interest from April 7, 1902. Such is the proper practice (Pullman Palace Car Co. *v.* Metropolitan Ry. 157 U. S. 112).

Respectfully submitted,

FRANK HAGERMAN,
Attorney for Petitioner,
HERBERT S. HADLEY,
Attorney General of the State of Missouri.

FILE COPY.

IN THE

UNITED STATES SUPREME COURT.

No. 258.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

AMANDA M. S. WHITFIELD (Plaintiff in Error),
Petitioner,

vs.

ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut (Defendant in Error),
Respondent.

Upon Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

STATEMENT AND BRIEF FOR THE ÆTNA LIFE INSURANCE COMPANY, RESPONDENT.

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EXCEPTIONS TO STATEMENT OF PETITIONER.

We desire to except to the statement of the case as prepared by the plaintiff in error (petitioner here) in the following particulars:

On page 2, of the brief for the petitioner, is the statement:

"The company defended upon the sole ground that death occurred by suicide and under the terms of the policy **the recovery was limited to one-tenth of the amount of the insurance.**"

As hereinafter pointed out, this is a very inaccurate and misleading statement of the respondent's position.

Again on page 2 is the statement:

"The trial court adopted the view that such limitation was valid."

As hereinafter pointed out, the trial court did not entertain such view.

On page 3 is the statement:

"Both the trial and appellate courts held that the statute only meant that suicide could not be a **complete** defence, and that it was lawful for the policy to provide for a **partial** defence to the extent of **reducing** the amount of recovery in case of suicide."

As hereinafter pointed out, neither the trial court nor the appellate court so held, and this statement is inaccurate and misleading.

On page 3 is the statement:

"The Circuit Court of Appeals rejected the doctrine of these cases because it was of the opinion that in these latter cases there was no **particular discussion** of that precise point, but said that while the question was **expressly decided** by the St. Louis Court of Appeals, yet the opinion was not binding", etc.

An examination of the opinion of the Circuit Court of Appeals (copied in full on page 29 of the record) will show that the Circuit Court of Appeals made no such statement. What the Court of Appeals said of the Federal cases was that they "contained no statement, discussion or decision of the question now under consideration"—not that there was "no particular discussion of the precise point" (Record 33). What it said of the Keller case was: "It is doubtful whether the policy sued on in the other case is properly **distinguishable** from those **just described**, but, **if** it is, the case **tends** to sustain the plaintiff's contention" (page 33).

So also the question for decision is not, as stated on page 5 of Petitioner's Brief "whether the recovery should be limited to one-tenth of the insurance", but is: "Shall the insurance, because of the statute, be increased to ten times what the parties agreed it should be?"

STATEMENT OF THE CASE BY RESPONDENT.

This is an action brought by Amanda M. S. Whitfield, widow of James Whitefield, deceased (plaintiff in error), petitioner, against the Ætna Life Insurance Company of Hartford, Connecticut, upon a policy of accident insurance issued by that company to her deceased husband for the sum of five thousand dollars.

THE PETITION.

The petition alleges the necessary jurisdictional facts, the issuance and delivery of the policy in consideration of the premium named therein, $6.25, and sets out the policy in *haec verba*, (Rec. 3 to 8, inclusive), that the policy was in full force and effect at the time of the death of the insured; that on April 7, 1902, while said policy was in force, at Kansas City, Missouri, James Whitfield **died from bodily injuries effected through external, violent and accidental means, and by a pistol shot;** that notice and proofs were given, and further proof waived, and that defendant offered to pay plaintiff the sum of five hundred dollars as the full amount due by virtue of Section 5 of the policy, and refused to pay any further sum, and asked judgment for five thousand dollars and interest.

Section 5 of the **policy,** so referred to in the petition, is as follows:

"In event of death, loss of limb or sight, or disability due to **injuries intentionally inflicted** upon the Insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to **injuries intentionally inflicted upon the Insured by himself;** or due to suicide, sane or insane; or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influence of intoxicants or narcotics, then in all such **cases referred to in this paragraph, the limit of this Company's liability** shall be **one-tenth the amount otherwise payable under this policy,** anything to the contrary in this policy notwithstanding."

THE ANSWER.

The **answer admitted** the issuance and delivery of the policy as alleged and that Whitfield died while it was in force, but **denied** that Whitfield died from bodily injuries effected through external, violent and accidental means, but **admitted** that he died from bodily injuries caused by a pistol shot and alleged that his death was not caused by accident but was the result of his own act and intention and resulted from a pistol shot fired by Whitfield for the purpose of taking his own life. The answer also admitted that plaintiff was Whitfield's widow and that notice and proofs of death were furnished. The answer then proceeded as follows:

"Further answering said petition defendant alleges that the contract sued upon is a policy of accident insurance and insured the said James Whitfield against loss of time resulting from bodily injuries effected through external, violent and accidental means in a specified sum weekly during disability as well as against death resulting from bodily injuries effected through external, violent and accidental means in the **principal sum** of five thousand dollars, but further provides that if such injuries are received while insured is riding in a passenger conveyance or elevator, or on a bicycle, or in a burning building, the amount to be paid shall be double the principal sum, or $10,000; that if death is due to sunstroke or freezing, or the result of unnecessary exposure to obvious risk, or to contact with poisonous substances, or hernia, or where there is no visible mark on the body, then the amount to be paid shall be one-fifth of the principal sum, or $1,000; and further provides that in the event death is caused by **intentional injuries** inflicted by the insured or any other person, whether such person be sane or insane, or while fighting, or in a riot, **or by suicide,** sane or insane, or by poison, or by inhaling gas or vapor, or while under the influence of intoxcants or narcotics, then **the amount to be paid shall be one-tenth ($\frac{1}{10}$) of the principal sum, or $500.**

"Defendant states that said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose thereby of taking his own life; that the cause of the death of said Whitfield was suicide."

"Defendant states that under the provisions of said policy it is liable to plaintiff in the sum of $500; that this is the full

sum it contracted to pay plaintiff in the event the death of said Whitfield was caused by suicide or by intentional injuries inflicted upon himself; that it is now ready and willing and tenders the plaintiff said amount; that it has always been ready and willing to pay said sum and prior to the institution of this suit tendered said sum to plaintiff and defendant now offers to let judgment go against it for said sum of $500; and prayed that judgment be entered for plaintiff for $500 and that costs be taxed against her." (Rec. 12, 13.)

THE REPLY.

The **reply** upon which the case was tried was as follows:

"Now comes plaintiff and for reply to the answer of defendant **admits** that James Whitfield died from bodily injuries caused by a **pistol shot fired by himself** and the cause of his death was **suicide**" (Rec. 14).

THE TRIAL.

A jury was waived and the cause submitted to the Court (Judge Phillips, W. D. of Mo.) upon an agreed statement of facts (Rec. 14 and 15).

Agreed Statement of Facts.

By the agreed statement of facts it was stipulated, in brief, as follows (Rec. 14.):

1. That the plaintiff is a citizen of Missouri and was the wife and is the widow of the insured.
2. That the defendant company is incorporated in Connecticut and licensed to do business in Missouri.
3. That for the consideration named therein ($6.25) the defendant issued the policy set forth in the petition to James Whitfield in Missouri and the policy was in force at the time of Whitfield's death.
4. That while the policy was in force Whitfield "died from bodily injuries **caused** by a pistol shot **intentionally** fired by himself for the **purpose** of thereby **taking his own life**; that the cause of death of said Whitfield was **suicide**".
5. That notice and proofs of death were given by plaintiff and further proofs waived by defendant; that plaintiff demanded payment and defendant offered to pay and tendered $500 as the full amount due under Section 5 of the policy, which amount plaintiff refused.

6. That defendant maintained its tender.

7. That either party might introduce further evidence not contradictory of the stipulation, and that it should not be deemed contradictory of the Stipulation for the plaintiff to prove, if she can and desires so to do, that at the time said Whitfield killed himself he was not in condition of mind to realize what he was doing or know the consequences of his act.

Neither party introduced any further evidence and the case was tried upon the facts thus stipulated.

Upon the foregoing facts the Court declared the law to be that the plaintiff was not entitled to recover $5,000, but was only entitled to recover $500. Judgment for $500 in favor of plaintiff was accordingly rendered, from which judgment the plaintiff prosecuted error to the Circuit Court of Appeals (8th Circuit), where the judgment was affirmed, and afterwards, upon the petition of the plaintiff and the Attorney General of Missouri a writ of *certiorari* was granted by this Court.

The opinion of the trial judge, Phillips (p. 19 of the Record) is reported in 125 Fed. 269, and the opinion of the Circuit Court of Appeals (p. 29 of the Record) is reported in 144 Fed. 356.

THE POLICY.

The policy is as follows—its provisions being consecutively stated—the eliminated matter being such only as is wholly immaterial to the questions under consideration:

Principal Sum $5.000. Accident Policy. Premium $6.25.

(First Contingency)

"The Ætna Life Insurance Company, of Hartford, Conn., in consideration of $6.25 does hereby insure James Whitfield, being a Sporting Editor by occupation, in the sum of **$25 per week against loss of time** resulting from **bodily injuries** effected through **external, violent and accidental means** which shall, independently of all other causes, immediately, continuously and **wholly disable** him from prosecuting any and every kind of business pertaining to his occupation as above stated;

Or if such injuries shall not **wholly** disable the insured as above but shall disable him from the performance of **one or more** important daily duties pertaining to his occupation, or if after a period of total disability, partial disability shall follow, then the company will pay 2/5 of the above weekly indemnity, or $10 per week; (Second Contingency)

(*a*) If such injuries result in the loss of **two members,** or in the loss of the sight of **both eyes,** the insured shall be paid the **full principal sum,** or $5,000. (Third Contingency)

(*b*) If such injuries result in the loss of the **right hand,** or of either leg above the knee, the insured shall be paid **one-half** of the principal sum. or $2,500. (Fourth Contingency)

(*c*) If such injuries result in the loss of the **left hand,** or of either foot at or above the ankle, the insured shall be paid **one-fifth** of the principal sum, or $1,000. (Fifth Contingency)

(*d*) If such injuries result in the loss of **one eye,** the insured shall be paid **one-eighth** of the principal sum, or $625. (Sixth Contingency)

(*e*) If death results from accidental injuries, the beneficiary shall be paid the **full** principal sum, or $5,000. (Seventh Contingency)

(*f*) If such injuries occur on a public conveyance, or in an elevator or while riding a bicycle (not in a race) or in a burning building, the insurance previously specified is **doubled,** that is, there shall be paid

For total disability $50 per week instead of $25 per week.

For partial disability $20 per week instead of $10 per week.

For loss of two members $10,000 instead of $5,000.

For loss of right hand, etc., $5,000 instead of $2,500.

For loss of left hand, etc., $2,000 instead of $1,000.

For loss of one eye $1,250 instead of $625.

For accidental death $10,000 instead of $5,000.

(Eighth Contingency — Double Insurance)

(One-Fifth Insurance)

(4) Where death, dismemberment or disability is due to sunstroke or freezing, unnecessary exposure to obvious danger, to contact with poisonous substances, or hernia, the limit of the company's liability is **one-fifth** of the amount otherwise payable.

(One-Tenth Insurance)

(5) Where death, dismemberment or disability is due to injuries **intentional** inflicted upon the insured by any other person (except assaults by burglars and robbers) or due to injuries received while fighting or in a riot, or due to injuries **intentionally inflicted** upon the insured by himself; or due to **suicide**, or due to taking of poison, or inhaling of gas or vapor, or due to injuries while under the influence of narcotics, the limit of the company's liability shall be one-tenth of the amount otherwise payable.

THE MISSOURI STATUTE.

Section 7896 (Revised Statutes of Missouri 1899) on which which plaintiff relies, provides as follows:

"SUICIDE NO DEFENSE, WHEN.—In all suits upon policies of insurance on life hereafter issued by any company **doing business** in this State, **to a citizen of this State**, it shall be **no defense that** the insured **committed suicide, unless** it shall be shown to the satisfaction of the Court or jury trying the cause, that the insured **contemplated suicide** at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

I.

The Defense Interposed.

The defense interposed in this case is that the defendant **did not contract** as plaintiff alleges; that it agreed to pay the specific amount of insurance contracted for in its policy, for the particular casualty which caused Whitfield's death, and that it did not agree to pay the amount which plaintiff alleges it contracted to pay. The company did not interpose **suicide as a defense** to the **action,** but it did interpose as a **defense to the petition** that it had **contracted** with respect to injuries intentionally inflicted by the insured resulting in death, **differently than alleged in the petition.** It pleaded that it **contracted to pay only $500** (and not $5,000) in the event of death resulting from suicide, or from intentional injuries, and that the insured died from suicide, or from intentional injuries, and therefore that it was liable only **as it contracted** and not **as plaintiff alleged it contracted.** In other words, the **contract actually made** is interposed as a **defense to the contract as pleaded,** and not the act of **suicide,** as a defense to the policy.

The cause of action in the petition is a claim for $5,000 for death "from bodily injuries effected through external, violent and accidental means and by a pistol shot". It is not alleged that the insured killed himself, or whether he did so intentionally or otherwise. The policy provides that in event of death due to injuries intentionally inflicted upon insured by himself; or due to suicide, defendant's liability shall be **one-tenth** of the amount otherwise payable under the policy, or **the sum of $500.** The defendant, to avail itself of the defense that it had contracted for a specific lesser amount of insurance in case of intentionally inflicted injuries and in case of death

resulting from such injuries (or suicide), was compelled to plead that the death was caused by such injuries and suicide. This plea was interposed **not for the purpose of barring a recovery on the policy,** *i. e.*, defending against the policy, but **to show that this particular death** was from a cause for which, by express agreement, **it was liable only for $500,** instead of $5,000, as plaintiff alleged in the petition, and after doing this, the answer **admits liability** under the policy for the death so occasioned by intentional self-inflicted injuries (or suicide) for $500, and **states that this is the full amount of insurance contracted for,** where death results from such cause, and that the defendant is ready and willing, and has been ready and willing, to pay that amount. The defendant therefore **admits its liability** under the policy for death by self-inflicted means, or by suicide, but pleads the **specific amount of insurance contracted for** ($500) as the extent of its liability under the policy, in **defense** of the **claim asserted by plaintiff** that such liability is **$5,000.** Under the pleadings therefore, the **defense** is not that the act of suicide is not within the **contract actually made,** but the defense is that the defendant **did not contract as plaintiff asserts in her petition.**

Suicide would be a **defense** to the **policy** if it was sought **through it** to **prevent recovery** on the policy. But here the policy, recognizing suicide as a contingency with which (at least if accidental) the company must deal under the law, does so in providing for payment of a fixed substantial sum in the event of the happening of that contingency.

The cause of action in this case is an alleged violation of the contract of insurance by the insurer refusing to pay to the insured the amount which the plaintiff alleges the insurer agreed to pay. The answer to this asserted cause of action is that the defendant **did not contract as alleged by plaintiff,** but is willing to pay the sum which it contracted to pay, to-wit, $500. The **defense** is not, therefore, **suicide,** but the **contract.**

It is not a defense **against the policy**, but a defense against the **action brought** on the policy, and alleges that the liability incurred is not the liability pleaded. The defendant does not assert that it should escape, or even reduce, its liability under the contract because the insured committed suicide, but does assert that it should not be held to liability in the amount plaintiff claims, because the **contract** fixed another and a lesser amount. The contract does not undertake to **limit** liability in the event of suicide, but simply **fixes** it, as it is fixed in various other contingencies.

The statute provides, omitting what is not material, that "in all suits upon policies of insurance on life * * * it shall be **no defense** that the insured committed suicide unless", etc.

What the statute says shall be no defense in a suit upon a life policy is "**that the insured committed suicide**". The defense in this case is not "that the insured committed suicide", for this under the policy, as well as under the statute, is no defense. The defense is "that for suicides the contract provides a lesser liability than plaintiff claims".

As the defense in this case is the contracted amount of insurance, to-wit, $500 in the event of suicide, and as defendant admits that the policy covers suicide and it is liable therefor thereunder, it is clear that *prima facie* the defense made is not within the statute.

The Statute—How Construed.

The free right of contract exists in regard to insurance as it does in regard to all other matters, unless it is taken away by law or is contrary to public policy.

If the construction contended for by plaintiff in error is correct, then one of three things must be true: (*a*) either Section 7896 nullifies the right of contract in respect to insurance in case of suicide, or (*b*) the contract made (the policy) is against

the public policy created by the statute, or (*c*) the contract made (the policy) is an evasion of the letter or spirit of the statute.

The plaintiff in error takes all three of these positions, and we will consider them in the order indicated.

Does the statute abrogate the right to contract for a specific substantial amount of insurance in case of suicide?

(*a*) The statute does not abrogate the right to contract in respect to suicide when construed by the rules of construction applicable to such statutes.

At common law, suicide was a defense to an action on a policy of insurance. Section 7896 declares it shall be no defense. In the absence of any controlling statute public policy condemns a contract to insure against death by intentional self-killing and precludes a recovery on a life insurance policy where death is so caused even though the policy contains no exception covering suicide. Ritter v. Mutual Life, 169 U. S. 139.

Hence, the statute is in derogation of common law and being so must be **strictly construed.**

In Shaw v. R. R. Co., 101 U. S. 565, involving the construction of the statutes of Pennsylvania and Missouri, making bills of lading negotiable, this Court says:

"**No statute is to be construed as altering the common law, farther than the words import.** It is not to be construed as making any innovation upon the common law which it does not **fairly express.**"

Mr. Sutherland in his work on Construction of Statutes, Sec. 400, says:

"Such statutes as take away a common law right, remove or add to common law disability, or provide proceedings unknown or contrary to that law, are **strictly construed.** The Courts can not properly give force to them **beyond what is expressed by their words or is necessarily implied from what is**

expressed. * * * Statutes are not to be construed as taking away a common law right unless the intention is **manifest.**"

Mr. Endlich in his work on Interpretation of Statutes, Sec. 113, says:

"There are certain objects which the legislature is presumed not to intend; * * *. One of these presumptions is, that the legislature does not intend to make any alteration in the law beyond what it **explicitly** declares, either in express terms or by **unmistakable** implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights or depart from the general system of law, without expressing its intention with **irresistible clearness;** and to give any such effect to general words, simply because in their widest and perhaps natural sense they have that meaning, would be to give them a meaning in which they were not really used. It is, therefore, an established rule of construction that general words and phrases, however wide and comprehensive in their literal meaning, must be construed as strictly limited to the immediate objects of the act, and as not altering the general principles of law; *i. e.*, they are to be construed as near the use and reason of the prior law as may be without violating their obvious meaning."

In the same work, Sec. 127, it is said:

"It is observable from the decisions referred to in these sections, that the presumption against an intent to alter the existing law beyond the immediate scope and object of the enactment under construction, applies as well where the existing law is statutory, as when it is promulgated by decisions. It refers to the whole system of pleading and practice to which the statute applies and of which the rule is to form a part; the latter must be construed consistently with the former. (14 Ga. 674.) And it refers equally to the common law, in whose rules and principles a statute is not presumed to evoke any change **beyond what is expressed in its provisions or fairly implied in them,** in order to give them full operation. * * * It has been expressly laid down, that statutes are not presumed to make any alteration in the common law further or otherwise, than the act does **expressly declare;** therefore, in all general matters, the law presumes the act did

not intend to evoke any alteration; for, if the Parliament had that design, they would have expressed it in the act; that the rules of the common law are not to be changed by doubtful implication. And it is probably true, that, taking one case with another, an intention on the part of the legislature to alter the statute law is sometimes presumed upon much slighter grounds than would support any such inference in the case of the common law. But **in this country, the rule has assumed the form of a dogma, that all statutes in derogation of the common law, or out of the course of the common law, are to be strictly construed.**"

Having in mind the necessary effect of this statute—the encouragment it offers to self-murder—that it gives legislative sanction and approval to the very contract which this Court has held so subversive of morality as to be within the condemnation of the law (in the absence of an enabling statute), why is not the rule of construction, for which we contend, to be applied here for the reasons suggested long ago by Judge Marshall in U. S. v. Fisher, 2 Cranch 390? This great Chief Justice said:

"Where **rights are infringed,** where **fundamental principles** are overthrown, where the **general** system of the **law** is **departed from,** the legislative intention must be expressed with **irresistible clearness** to induce a court of justice to suppose a design to effect such objects."

It is said by an eminent author (Sedgwick, p. 271):

"That with all the gross interpretation of the common law, it did contain certain grand principles, and these principles had been worked out into many practical rules, both of primary rights and procedure, which protected personal rights, rights of property, of life, of liberty, of body, and limb, against the encroachments both of government and private individuals. This is the great glory of the common law. **Any statute which should take away or diminish these rights, should be strictly construed.**

"To this extent, the rule is in the highest degree of value, not because such statutes 'are in derogation of the common law, but because they oppose the overwhelming power of the government to the futile power of resistance of the individual, and it is the duty of the courts, under such circumstances, to

guard individuals as far as just and legal, or, in other words, to preserve the individual from having his personal rights taken away by any means that are not strictly legal'.

"All the matters here enumerated, are covered by the rules forbidding, except in clear cases (and in such it is conceded, even the formula 'in derogation', etc., should have to give way) a construction which would create a new or destroy an existing jurisdiction or remedy or give summary process, and the rule which requires a strict construction of statutes that restrict or encroach upon rights, or impose burdens upon persons or property, or confer exemptions, prejudices or powers.

"As to all other statutes changing or departing from the common law, the same rule applies as in case of statutes changing the statutory law, viz.: that the legislature is not presumed to intend any alteration beyond the immediate objects and provision of the enactment."

In R. R. Co. v. R. R. Co., 63 Fed. 775–777, the Court of Appeals for the 8th Circuit, through Judge Thayer, said:

"This **common law right** of requiring payment in advance of some customers, and of extending credit to others, has not been taken away by the interstate commerce law, unless it is taken away indirectly by the inhibition contained in the third section of the act. * * * In view of the fact that all persons and corporations are entitled at common law to determine for themselves, and on considerations that are satisfactory to themselves, for whom they will render services on credit, we are not prepared to hold that an interstate carrier subjects another carrier to an unreasonable and undue disadvantage because it exacts of that carrier the prepayment of freight on all property received from it at a given station, while it does not require charges to be paid in advance on freight received from other individuals and corporations at such stations. So far as we are aware, no complaint had been made of abuses of this character at the time the interstate commerce law was enacted, and it may be inferred that the particular wrong complained of was not within the special contemplation of Congress. **This being so, the general words of the statute ought not to be given a scope which will deprive the defendant company of an undoubted common law right, which all other individuals and corporations are still privileged to exercise and ordinarily do exercise.**"

In the light of these authorities, the construction contended for by the plaintiff in error, can be adopted only if the very words of the statute justify such construction.

If we refer to the statute, no words are found therein which abridge or take away the right to **contract** in respect to insurance in the event of death by suicide, except in so far that where life is insured, the **fact** of suicide shall **not be a defense** to the insurance. There are no words either directly or indirectly prohibiting the parties from agreeing or fixing the amount of insurance in case of suicide. On the contrary, when the legislature simply made suicide **no ground of defense**, thereby compelling the insurer **to assume the risk** of suicide, it **impliedly** left all other matters open for agreement by the parties. The legislature was depriving parties of their ordinary rights, and if it had intended to deprive them of the right to make any **agreement** with respect to suicide, or had intended that they should not contract for a limited liability in case of suicide, it is to be presumed that it would have so declared in certain and emphatic language.

And so the trial court (Judge Phillips) held, saying, in in the course of his opinion (Rec. p. 20):

"As this statute is in derogation of the **common law right of defense**, it is **not** to be **extended** beyond the **letter and spirit** of the statute. **It** does not undertake to **declare** that under an accident policy, involving a great variety of accidents resulting in death, as does the policy in question, **parties may not stipulate** for the payment of a **specified sum** in the event of death resulting from suicide. It simply declares that the **fact of** suicide shall constitute no defense to the suit. * * * **Why** parties to such a contract **may not agree** upon a stipulated amount, to be paid in case of death resulting from suicide, as well as death resulting from an accident on a railroad car, or occurring in a burning building (which, under this policy, is made double the amount of the principal liability), is not apparent. * * *

"The **only limitation** in the language of the **statute** is, that in case of death, resulting from suicide, it shall constitute **no defense** against **liability on the policy**; that is to say, it shall not **defeat a right of recovery** to the extent of the sum stipulated for in the policy. The innovation, in short, made by the statute, was to cut off a defense based upon **the fact** that the assured committed suicide, without undertaking to interfere with the **right of contract** between parties *sui juris* as

to the **extent of liability** in case of death resulting from the specific cause."

And so also the Court of Appeals treats this point, saying (Rec. 30):

"The statute abrogates a common law defense and puts a **restraint upon the freedom of contract.** This alone indicates that it should receive a **restrictive** rather than an **expansive** construction * * * and so it is to **effectuate** the **true legislative** intent that a statute in derogation of the common law or in **restraint of the freedom of contract** is held to make **no change in the law** which it does not **fairly express.** * * *

"The statute **does not say** that the amount of insurance provided for in the event of death by suicide shall not be **less than** is provided for when death results in some other way, nor that there shall be no **discrimination** of any kind against suicide as a risk. Nor is it an apt or natural way of expressing **that thought** to declare that it shall be no defense **that** the insured committed suicide and that any stipulation to the contrary shall be void * * * These considerations convince us that the statute does not abridge the **freedom of contract further** than to prevent the **elimination** of suicide from the **risks covered by any policy** to which it is applicable."

We desire to suggest to the Court that if the legislature of Missouri had intended to **nullify** the common law **right to contract** and intended to absolutely abrogate all power of parties to contract with respect to the amount at risk in case of suicide, it would have used apt words for that purpose. The legislature has merely said it shall be no defense in suits upon policies on life **that the insured committed suicide.** It has nowhere said that the contract of insurance "shall provide for the payment of a like sum in case of suicide as is provided for death through any other contingency", and we submit that the failure or omission of the legislature to indicate its intention in the words we have last suggested, or in similar words, raises a legal presumption that such was **not** its intention. Judge Sanborn, in the case of Union Central Insurance Company v. Champlin, 116 Fed. Rep. 858, *loc. cit.* 860, in construing an Act of Congress with respect to the jurisdiction of the Circuit Courts of Appeal, says:

"The answer to this argument, however, is that, while ambiguous terms and doubtful expressions in legislative acts, may, and should be, so interpreted by the Courts as to carry out the intention of the body which enacted them, when they fairly disclose that intention, yet it is the **purpose which the act itself discloses,** and that only, which may be thus enforced. The Courts may not import into a plain and unambiguous law, and give effect to a **supposed intention** or purpose of the legislative body, which is **neither expressed nor indicated** in the act. Such a course of action would pass beyond the limits of construction or interpretation, into the forbidden domain of judicial legislation. The Act of March 3, 1891, is neither ambiguous in its expressions nor doubtful in its meaning, in so far as it relates to the jurisdiction of this Court, over cases like that in hand. **If Congress intended** to confer such jurisdiction, there is **nothing in the law** which it enacted, to evidence any such intention, while the **striking omission** to express it, raises the **legal presumption** that it did not exist, and **forbids the Courts** from **importing it into the law** and giving it effect."

In U. S. v. U. P. R. R. Co., 91 U. S. 72, *loc. cit.* 83, this Court, in construing the statute, under which the bonds were issued by the Government, to aid in the construction of the Union Pacific road, in regard to the liability of the company for the interest before maturity, said:

"That the Government is expected in the first instance to pay the interest, is clear enough; for the mortgage was given to secure the repayment of the bonds, 'together with all interest thereon, which shall have been paid by the United States'. This phrase implies a prior payment by the United States, whatever may be the duty of the corporation in regard to reimbursement as subsequently defined. Besides this, when repayment is spoken of, it is understood that something has been advanced, which is to be paid back. **Apart from this, had it been the intention that the corporation itself should pay the interest as it fell due, apt words denoting such a purpose would have been used.**"

Furthermore, this statute is to be read as a **part of** the contract—and if as a part of the contract both the provisions of the statute and the provisions of the contract can be so read that **both** may stand and be **given effect,** then this construction should be adopted in prefer-

ence to a construction by which the interpolated **statutory provisions** will wipe out or destroy the other **contract** provisions. Construed as it is construed by the defendant in error, the statute means that the company shall not exempt itself absolutely from liability, but may contract for liability in such contingency for any substantial amount, large or small—and so construed, effect is given to the **statute** as well as to all parts of the **contract.** Construed, however, as it is construed by the plaintiff in error, that the company can not contract for a lesser insurance in case of suicide than the greatest amount it contracts to pay in any other contingency, the interpolated **statute** provisions wipe out absolutely the **contract** provisions so far as they relate to suicide.

Thus (if we adopt the latter construction) we have one contract provision (interpolated by statute) destroying another contract provision (created by the parties), when there is no natural inconsistency between them and when such **inconsistency** is **only created by a construction** which does violence to the natural import of the language used.

Public Policy.

(*b*) The contract pleaded by defendant is not against the public policy of the State of Missouri.

"The public policy of the Government is to be found in its statutes, and when they have not directly spoken, then in the decisions of the Courts and the constant practice of the Government officials; but **when the law-making power speaks upon a particular subject,** over which it has constitutional power to legislate, **public policy** in such a case is **what the statute enacts.**"

United States v. Freight Assn., 166 U. S. 290, 340.

As said by the Court in Baltimore R. Co. v. Voigt, 176 U. S. 498:

"The **right** of private **contract** is no small part of the liberty of the citizen, and the usual and most important function of courts of justice is rather to **maintain and enforce**

contracts, than to enable parties thereto to escape from their obligation on the pretext of **public policy** unless it **clearly appears** that they contravene public right or the public welfare."

In Hadden v. Collector, 5th Wall. 107, 111, the Court said:

"What is termed the policy of the government with reference to any **particular legislation** is generally a very **uncertain thing**, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a **ground much too unstable** upon which to rest the judgment of the Court in the **interpretation of statutes.**"

So in Scott v. Reid, 10 Peters 524–527, the Court said:

"Where the language of the act is explicit, there is great danger in **departing from the words used**, to give an effect to the law which may be **supposed** to have been **designed** by the **legislature.** * * * It is not for the Court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, **because no good reason can be assigned why they were excluded from its provisions.**"

We submit that there is nothing in the statute which indicates that it is the public policy of Missouri to limit or restrict the power to contract with respect to the amount of indemnity that shall be granted under an accident or life policy, where death ensues from suicide. It is the public policy of the State of Missouri, apparently, that the parties shall not contract so as to absolve the insurer absolutely from liability under an insurance policy in the event of suicide, but it is nowhere stated in the law that policies against suicide shall be written for $100 or $1,000 or $5,000, nor has the law said that an insurer shall be forbidden from paying a different amount in the event of death from suicide than he contracts to pay in the event of death from any other cause. The insurer is at perfect liberty to contract for the payment of a fixed or a variable amount without either a minimum or a maximum limit as to such amount; and if this is so the contract pleaded by the defendant is not violative of the public policy of Missouri.

To determine whether or not the contract pleaded by defendant violates the public policy of the State, we must first determine definitely what that public policy is.

At common law suicide was a crime punishable by disgrace and forfeiture (4th Blackstone 190). It is so regarded still in most parts of America and it is the public policy of nearly all of the States to **discourage** suicide. This Court has denied recovery by the estate of the insured upon a life insurance policy matured by deliberate self-murder, not because of a policy provision against suicide, but because public policy, in the absence of express statute, discourages suicide, and the insured should not be permitted to mature the contract by his own wrong (Ritter v. Mutual Life, 169 U. S. 139).

But Missouri by this statue, seemingly **encourages suicide** and **offers** a **bounty** therefor, payable, not out of the public funds of the State, but out of the private funds of insurance companies.

However, the public policy of a State is not to be gathered from one statute alone. Common fairness to the State requires that the existence of this further statute should be called to the attention of the Court.

Sec. 1822, R. S. Mo. 1899. "Every person deliberately **assisting another** in the commission of **self-murder** shall be deemed guilty of manslaughter in the first degree", and for this the punishment is imprisonment in the penitentiary for not less than five years (Sec. 1835). So that, suicide, still designated as self-**murder** and that it is still recognized as a wrong follows from the fact that to assist one therein is a crime punishable by imprisonment. It is clear therefore that Missouri has not set about **deliberately** to encourage her citizens to self-murder, as the insurance suicide statute would seem to indicate. She is not **deliberately** encouraging this great wrong denounced alike by the laws of God and of man since Christ came upon the earth. Her public policy is something less

heinous than this, and what this policy is should be determined rather from what she has done **deliberately** than from laws whose principal object was to provide relief in particular kinds of cases without any express intention of formulating a general public policy.

Carefully considered it would seem that her public policy is that "**the fact** that the insured committed suicide shall not be a defense to suits upon policies hereafter issued", that her public policy is that the mere **fact** of suicide shall not hereafter avoid policies of insurance upon life, and that hereafter insurance companies **must contract** with a view to suicide as a liability to be assumed, but **how** they shall contract or to what **extent** they shall assume liability in case of suicide, the **statute** has has not spoken, and from no other source can we gather the public policy of the State on this subject. In other words the public policy is that in contracting for liability in case of **death** one must not contract **against liability for suicidal death.** This seems to be the limit to which this particular statute has gone, and that the public policy of the State is not such as to require the Court to enlarge its terms by intendment seems clear in view of Section 1822 above quoted.

If the public policy of the State is only that the company shall not contract against liability in case of suicide, then the contract pleaded by defendant is not violative of that public policy, for it expressly recognizes such liability by providing indemnity in case of suicide, in a sum, which, so far from being merely nominal, is nearly one hundred times as great as the premium paid.

The subject of "public policy" was considered by the Court of Appeals in its opinion in this case (Rec. 31), and disposed of by reference to and quotation from the Ritter case (169 U. S. 154), to the effect "a contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive

of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment", the Court indicates the very natural constraint which all moral men must feel in enforcing a statute, the necessary (though perhaps unintentional) effect of which is subversive of public good and sound morality, in these words:

"It hardly needs statement that a thing which is **subversive** of **sound morality** is none the less so because **sanctioned by statute,** and yet, if the statute violates no constitutional provision or principle, effect **must** be given to it and **responsibility for its enactment must rest with the legislature.** Courts, however, always avoid a construction which will render a statute subversive of sound morality, unjust or absurd, **if a more sensible construction** can be given to it; and, if its terms be such that it **must** unavoidably lead to **evil, unjust or absurd consequences,** the Courts give to it **such effect only** as is **necessarily required** by the **clear import** of its language."

No more just and temperate condemnation of a vicious statute was ever penned by a Court. The plain duty owing to humanity—man's duty to man—to so restrict the operation of this law as to lessen, if possible, the encouragement it offers to self-slaughter, could not be more emphatically stated, and yet have we here not only counsel employed by private interest ably and properly presenting his client's cause, but also the eminent Attorney General of the State voluntarily injecting the influence of his great office to secure an expansive construction of this statute to the end that suicide for profit may be further encouraged in the great State which he represents. And the Attorney General urges that the construction given to this statute by the Court of Appeals will impair existing policies containing suicide provisions like that under discussion, and thus "destroy the **benefits** and **advantages** given by a **wholesome** statutory provision". Which is to say, that, though these policyholders have agreed that in case of suicide their insurance shall only be $500, yet, because of the statute, this contract provision is void, and inasmuch as the policy-

holder is presumed to have made his contract knowing that the provision was void and acted on the faith of its invalidity and in the belief that it affected his contract so as to increase the $500 to $5,000 in case of suicide, it will be a crying injustice to him if he is not permitted to reap this "wholesome" (wholesale) advantage, albeit he contracted for the smaller amount and suicide is still wrong.

Counsel is in error in asserting (as he does at p. 11 of Petitioner's Brief) that the trial court and the Circuit Court of Appeals "denied that the statute established any substantial public policy".

Judge Phillips denied that the public policy thereby created was as counsel contended for, and says (Rec. 21):

"It is not maintable that the statute in question establishes any public policy **beyond its expression**, that suicide shall constitute no defense against liability of the company on an accident policy. * * * As the legislature has gone **no further** in the assertion of the **State policy**, the Courts ought not to undertake by mere judicial assertion to extend the operation of the statute."

The Circuit Court of Appeals in its opinion (Rec. 31) clearly indicates that it is the "legislative intent" that must control.

Nowhere, in either opinion, is there any denial that the statute creates **a** public policy, but **the** public policy for which opposing counsel contend is denied by both opinions.

Evasion.

(*c*) Nor is the contract in question an **evasion** of the statute. We have here no contract by which the insurer in the event of suicide undertakes to **return the consideration**, or merely undertakes to return a part of the consideration, and no contract by which the policy is to be **cancelled or surrendered.** The premium paid in this case was $6.25 quarterly. For this the insured was entitled to receive a variable mini-

mum of insurance in eight different and separate contingencies; among which was death by suicide, **$500**; in certain other contingencies $625, and in others **$1,000**, and in others **$2,500**, and in others **$5,000**, and in certain events, even double the principal sum, or **$10,000**, and besides, weekly indemnity, varying according to circumstances, in the sum of $10, $20, $25 and $50 per week. Here was an agreement to pay a **substantial insurance in case of suicide**, and it is no less substantial, in its essentials, because the contract provided in this instance for a payment of $500, than where in others it provides for the payment of $5,000. As compared with the premium paid for the policy, $6.25, no one will contend for a moment that the agreement to pay $500, or nearly one hundred times the premium, was such a nominal undertaking as to constitute an evasion of the duty imposed by the statute, which duty was, as heretofore pointed out, nothing more than that the insurer should assume the risk of death by suicide where it undertook or assumed the risk or liability for death, and which duty thus imposed was not that the insurer should assume a liability in case of suicide, either for a specific amount or for an amount either equal to or proportioned to the liability for death in any other manner.

The rule with regard to the evasion of the statute, from section 138 of Endlich on Statutes, cited in appellant's brief, while good, so far as it goes, is subject to certain limitations, stated by Mr. Endlich, in the section now quoted:

"**It is not evading an act to keep outside of it**, although, for instance, a beer-shop keeper, who is licensed to sell beer, only to be drank **on the premises**, evades the act, if he sells beeer to be drank on **a bench** which he provides for his customers, close to his shop; the intention making it **substantially**, and in **effect, a sale** for consumption on the **premises.** A mere sale at the window, to a person who stood on the road outside, would not be an evasion, though the buyer drank the beer immediately on receiving it, etc. (Sec. 144.)

* * * * * * *

"In all such cases, it is, in truth, rather **the particular transaction** than the statute, which is the **subject of construction.** If it is found to be **in substance within the statute,** it is not suffered to escape from the operation of the law by the disguise under which its real character is masked.

"If, on the other hand, the **substance of the transaction** is found to be **beyond the reach or outside the scope of the enactment,** the **resemblance** to that which is prohibited, or even the fact that the **latter** may, in **some instances, embrace the former,** will **not bring it within the statutes.**"

Endlich on Statutes, Sec. 145.

In Neilson v. Lagow, 12 How., p. 98, *loc. cit.* 107, Congress having passed an Act declaring that no land shall be purchased on account of the United States, except under a law authorizing such purchase, where land was purchased and conveyed to trustees, this Court said:

"If it were necessary, therefore, we should hold that the Act of Congress was not applicable to this conveyance, because by it no title to the land was purchased on account of the United States."

The rule with regard to evasion of statutes as quoted by opposing counsel from 26 Enc. of Law, page 657, is good as far as quoted, but the part of the statement of the law in that compilation which counsel omits to quote is the part which has direct bearing on the question here, and is black-typed in the following excerpt:

"To carry out effectually the purpose of a statute it must be so construed as to defeat all attempts to do or avoid in an indirect or circuitous manner that which it has prohibited or enjoined; courts must labor to suppress all subtle inventions and circumlocution by which the object and purpose of the law will be defeated. **It is, however, essential not to confound what is actually or virtually prohibited or enjoined by the language, with what is really beyond the contemplation, though it be within the policy, of the act, for it is only to the former case that the principle under consideration applies, and not to cases where, however manifest the object of the act may be, the language is not coextensive with it.**"

26 Am. & Eng. Enc. (2 Ed.), p. 675.

In the early history of this Court it was called upon to decide whether driving living cattle on foot was "transporting" them within the meaning of a statute prohibiting a citizen of the United States from "transporting over land, or otherwise, in any wagon, cart, sleigh, boat, or otherwise, any munitions of war or provisions from the United States to Canada". A majority of the Court answered in the negative. In the course of the opinion the Court says:

"It may be admitted that the **mischief is the same** whether the enemy be supplied with provisions one way or another; but this affords **no reason** for construing a penal law by equity, so as to **extend** it to **cases not within the correct and ordinary meaning** of the **expressions** of the law."

U. S. v. Sheldon, 2 Wheat. 119, 121.

While the statute under consideration in the Sheldon case was a penal statute, the statute in the case at bar is in derogation of the common law and is alike subject to the rule of strict construction—a construction not so strict as to exclude cases fairly within its intendment, but so strict as to exclude those not within its "expressed provisions or fairly implied in them".

Certainly it can not be held that when the Missouri Legislature said that "in suits on policies of life insurance it shall be no defense **that** the insured committed suicide", it fairly intended or in effect said, "in suits on policies of life insurance for $5,000 it shall be no defense **that** the insurer **only agreed to pay** $500".

The rule laid down in the Sheldon case has been followed by this Court ever since.

"We recognize the value of the rule construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this Court has repeatedly held that this **rule does not apply** to **instances** which are **not embraced** in the **language** of the statute, or **implied from a fair interpretation of its context.**"

U. S. v. Chase, 135 U. S. 255, 261.

If, as suggested in the above quotation, we look for the "mischief" which this statute was designed to remedy, we are confused by trying to label the contract sought to be prevented as "mischief". Manifestly the statute was designed to compel recognition by the insurance companies of suicide as a cause of death creating liability—to prevent one of the parties from absolving the other from liability in a life insurance contract in the event it was matured by suicide. The "mischief" was that insurance companies were in the habit of discouraging suicide by contracting for **no liability** in case of suicide. The legislature said that the **fact** of suicide should no longer be **a defense to the policy** even though it should be so stipulated therein. Is not this "mischief" remedied where the contract assumes liability—expressly contracts to pay a fixed sum in case of liability? Counsel for plaintiff would say so if the contract was to pay $5,000 in case of suicide, for that is all he sues for. Does not the same result follow where the amount is $500—and if not, why not? It surely does if $500 is a substantial sum, and certainly it can not be otherwise considered in view of the amount of the premium, $6.25. Indeed, the entire question of evasion is disposed of when it is once determined that $500 is a substantial sum. It was held to be a substantial sum both by the trial court (Rec. 22) and the Court of Appeals (Rec. 33). For the purposes of argument on this point we concede that if the insurance granted for suicide was merely nominal, $1.00 or $10, on the premiums paid, or the reserve on the policy (which is only a part of the premiums), it would amount to an evasion of the statute.

In disposing of this point the Court of Appeals said (Rec. 33):

"But it is said that if this be so the statute can be **evaded** and its purpose defeated by providing for the payment of some **inconsiderable sum,** such as one dollar, in the event of suicide. **We think otherwise.** That would be an indirect but **substantial elimination** of suicide from the risks

covered by the policy and would be **as much within the inhibition of the statute** as would be a stipulation directly declaring suicide to be a defense. We do not doubt that any **policy** falling within the operation of the statute **must provide substantial insurance** against suicide, but beyond this the freedom of contract is not affected."

II.

DISCRIMINATION against suicide is not prohibited by the Missouri Statute.

A policy of insurance is a contract. Like all other written contracts its terms are to be ascertained from the instrument evidencing it and the applicatory statutes, the provisions of which are considered by implication a part of the contract. Contract provisions violative of such statutes are nugatory. This principle is conceded and is constantly borne in mind throughout this discussion.

The policy sued on is of the class known as accident policies. Its primary object as shown by its provisions is to indemnify the insured by weekly indemnity against loss of time resulting from bodily injuries inflicted through external, violent and **accidental** means. The extent of this indemnity is variable, accordingly as the disability shall be total or partial, and depending upon the place where the injury happened.

Collateral to this primary object, the payment of weekly indemnity, certain gross payments are provided to be made in cases where the injury is the cause of the permanent loss of certain bodily members, as the hand, foot, the eye, in which cases certain proportions of the principal sum of insurance are payable. Under such circumstances the permanent nature of the injury requires that payment of a gross sum be made in lieu of weekly indemnity.

In cases of accidental death, payment of weekly indemnity is, of course, impracticable, so payment is provided for in gross. For death by accident (generally) the payment of the

principal sum, or $5,000, is provided. Where death results from particular accidents or under certain circumstances, as while the insured is a **passenger** upon a public conveyance, it is provided that payment of double the principal sum, or **$10,000,** shall be made. Again, where death results under certain other circumstances, as from **sunstroke,** or **freezing,** one-fifth of the principal sum, or **$1,000,** is provided to be paid. And again, where death results from injuries **intentionally inflicted** by some other person, or received while in a **riot or fighting,** or while under the influence of **intoxicants,** or **narcotics,** or from **suicide,** one-tenth of the principal sum, or $500, shall be payable.

Where the policy insures against death generally, or against death arising in a particular manner (and the manner of death so covered includes death by suicide), the Missouri statute abolishes the **defense** of suicide. The question for determination, therefore, is whether the **defense** in this case is the (**fact** of) suicide, or whether the defense is that the defendant **did not agree,** as plaintiff alleges it agreed, to-wit, to pay **$5,000,** but did agree to pay **$500** under the policy sued on.

The statute does not undertake to abolish suicide as a **legitimate subject of contract.** It merely prevents the enforcement of a **contract provision for forfeiture** in case of suicide. Unlike, under an ordinary life policy, the insured under this policy was not insured for a **certain,** definite and fixed **sum,** payable upon death, but was guaranteed the payment of a weekly indemnity in case of disability and a **gross** but **variable** sum in case of death from accident, the amount depending upon the character of the accident or the manner and circumstances under which it occurred. It was not a contract to pay $5,000, because, under the terms of the policy, $10,000 might be paid, or $1,000 or $500, depending upon circumstances.

It will be observed that the amounts payable under the varying circumstances stated in the policy are **lessened** according to the **probable personal contribution** to the causes of death **by the insured.**

For example, death or injury while a **passenger** upon a public conveyance has very little probability of causal contribution on the part of the insured. In such cases $10,000 is payable. So, too, where the insured is killed in a **burning building.** In such cases there is practically no room for the act of the insured to either cause or avert injury. On the other hand, disability or death by **sunstroke or freezing** has a certain element of exposure (to either excessive heat or excesive cold) associated with it. So, also, the **unnecessary exposure to obvious danger,** in which case the extent of liability is one-fifth of the principal sum, or $1,000.

In those cases where one-tenth of the principal sum, or $500, is payable, practically all of the circumstances have **largely predominant** in them the **element of personal volition,** such as injuries **intentionally inflicted** by others, except where done for the purpose of robbery or burglary (recognizing the probable inability of the insured to forearm or protect himself, and hence the exception), injuries due to **fighting,** injuries **intentionally** inflicted by the insured upon himself, injuries received while under the influence of **intoxicants** or **narcotics,** and **suicide.**

So that it clearly appears that suicide is not made a **defense** to an action on the policy, but is merely made the **subject of rational contractual discrimination,** and the policy **recognizes suicide** as a result **creating liability,** and **insures against suicide,** but the amount of insurance against suicide is not $10,000 nor $5,000 or $1,000, but $500. Just so, the policy recognizes liability for death from sunstroke for $1,000 and not for $5,000.

Nor can it with reason be said that the suicide provision diminishes the insurance. The insurance against suicide is at

no time more than $500. The insurance is not $5,000 subject to be diminished by suicide to $500. The insured under the contract was indemnified against certain results caused in certain ways—the amount of insurance varying accordingly.

Assume yourself insured under such a policy, what is the amount of your insurance? Roughly speaking you say $5,000, because the accident most likely to cause death would result in a $5,000 indemnity to your estate, but a closer examination of the contract discloses that obviously this is not so. You are really insured for various sums, $10,000 in some instances and from this varying down to $500, according to the nature of the accidents that may befall you.

Nor can it be said that this provision is a subterfuge or an attempted evasion of the terms of the statute. It is founded on every principle of rational discrimination. The statute is in derogation of common right, the right of freedom of contract. Its purpose was to prevent **forfeitures,** to prevent contract provisions against **any liability.** The legislature and the Courts have said to the insurance companies, "you have insured against accidents—in some cases suicide is an accident. Where you are otherwise liable for suicide you must not provide that the insurance shall be **forfeited** by the fact of suicide". The legislature has never said that all suicides are accidents or that all policies of accident insurance must pay for suicides. It did not say and it did not intend to say, "whenever you insure a citizen of Missouri against disability or death resulting from accident, you may insure him in the same policy for $10,000 in case he is killed while a passenger upon a car, and for $5,000 in case he is run over by one on the street, and for $1,000 in case he dies from sunstroke, but in case he kills himself you must insure him for $5,000, and no more and no less". Yet this, in its last analysis, is what plaintiff's contention comes to.

If the right still exists in the insurer to discriminate in the amount of insurance upon the basis of the cause of death, every possible reason pleads for it in the case of suicide. Suicide is always a fraud in result; it is often a fraud in purpose.

The legislature, in its wisdom, has decreed that it shall not be a validating cause for **avoiding** or forfeiting the contract, that it shall not be a defense to the liability under the policy, but it has not undertaken to eliminate suicide as a **subject of honest, legitimate discrimination,** which alone is what is sought to be done by the policy in this case.

Opposing counsel contends, however, that to uphold the defendant's position is to permit suicide to become **some** defense, or a **partial** defense, while the statute says suicide shall be **no** defense, and cites numerous authorities holding that the word "defense" may include a partial as well as a total defense. So it may. The meaning of any word in any case must be determined from the context, and it is by reference to the context that we must determine the meaning of the word in this instance. As "the same words may require a different construction when used in different documents" (187 U. S. 201), so also the same words may require a different construction when used in different statutes. "Identity of words is not decisive of identity of meaning when they are used in different connections for different purposes." When the statute says "in all suits on policies * * * it shall be no defense that the insured committed suicide", it meant that something should not constitute a defense. What was that something? Clearly "that suicide" *i. e.*, "the fact of suicide" should not constitute a defense. But should not constitute a defense to what?—to the suit brought?—or to the liability on the policy?

It clearly means that the fact of suicide shall not constitute a defense to the liability on the policy. It clearly does not

mean that suicide shall constitute no defense to any suit brought by an insured regardless of the policy, for if this were so the claimant might bring suit for $10,000 when the policy only insured for $1,000. But, in substance, this is the final conclusion that plaintiff's contention leads to, for here he has brought a suit for $5,000 when the contract only pretends to insure against death by suicide in the sum of $500, and there is nearly as much reason for suing for $20,000 or $10,000 as there is for $5,000. And on page 18 of his brief counsel boldly takes the position that "the suit might have been brought for that amount ($10,000), but the reasonable construction was adopted by the pleader" and only $5,000 sued for. It can not be that a right of action (at law) exists on a specific contract obligation and the amount of recovery be variable "accordingly as the pleader may adopt a reasonable or unreasonable construction". We think that this statement by counsel demonstrates the utter instability of his position, for if he is right and this policy had provided $100,000 as the specific amount of insurance payable if the insured should be killed by dynamite while saying his prayers in St. Peters at Rome as the single instance and circumstance in which that sum was payable, plaintiff would still be entitled to recover $100,000 although the insured intentionally suicided while Sporting Editor of the Star at Kansas City, Missouri.

Of counsel's position on this point the trial court said (Rec. 20):

"To say that when the defendant insists that on the face of the very contract sued on its liability in case of suicide is limited to $500, it is some defense and therefore in contravention of the term 'it shall be no defense', is, with all due respect, to juggle with mere words without regard to meaning. The term 'it shall be no defense' is grammatically the equivalent of 'it shall not be a defense'. It means no more and no less. In law it means that **the given fact of** death by suicide shall not bar an action on the policy. * * * Looking at the language of the statute, and taken in its legal technical sense, in my humble opinion, nothing more was intended than

that, **in view** of the fact that insurance companies under like policies **had successfully interposed as a complete defense** against any liability **that the insured** had **taken his own** life, hereafter **no such defense** shall avail to defeat a recovery. As the legislature has gone no further in the assertion of the State policy **the Courts ought not to undertake by mere judicial assertion to extend the operation of the statute.**"

We submit that this, too, is the substance and effect of the two Federal cases (Berry and Jarmon) cited by petitioner.

When this case came before the Court of Appeals counsel again urged that the defense here was inhibited by the statute, but his contention was disposed of by the following most convincing reasoning:

"In the absence of the statute" (says the Court of Appeals, Rec. 32), "an insured suicide while sane avoids his insurance, not **partially**, but **completely**, and, under the qualifying clause of the statute, that is still the effect of self-destruction, if it was contemplated by the insured at the time he made the application for the policy. Thus **the** defense which the statute is **primarily** designed to abrogate, as also **the one which it still sanctions**, is a **complete** and not a **partial** one. Moreover, we think it is altogether a **mistaken use** of the word defense to say that a policy which provides for insurance against death by one or more means in a specified amount, and against death by another means in a lesser amount, **makes death by the latter means a defense, partial or otherwise, to an action on the policy.** On the contrary, such a policy **accepts** as a **risk** death by the latter means, and in the event of its occurrence **gives a right of action** against the insurer."

All that the defendant urges as a defense is that the contract, as made, be enforced, and this not as a defense to its **liability on the policy**, but as a defense to the plaintiff's misconception of its liability.

CASES CITED BY OPPOSING COUNSEL.

Logan Case.

Counsel for plaintiff have plainly misconceived the scope and meaning of the decision and opinion of the Supreme Court of Missouri, in the Logan case (Logan v. Fid. & Cas. Co., 146 Mo. 114), and one is very apt to be misled unless the law, as previously decided, is constantly borne in mind and if the limitations of the language of the opinion in the Logan case are overlooked.

Long before the Logan case was decided it was held by this Court that **suicide** by an **insane man** was an **accident** and that for death so caused the insurer was liable on a policy insuring against death by external, violent and accidental means (Accident Ins. Co. v. Crandall, 120 U. S. 527, 533, 534).

In the Crandall case this Court said:

"No one doubts that hanging is a violent means of death. As it affects the body from without it is external and, according to the decisions as to suicide under policies of life insurance, before referred to, it can not **when done by an insane person,** be held to be other than **accidental.**"

And that this is the law generally is held in the following cases:

Fid. & Cas. Co. v. Wiese, 182 Ill. 498;
Grand Lodge v. Wieting, 162 Ill. 408, 419.

It has never been held in Missouri, or any other place, that suicide **by a sane person** is an accident. Quite the contrary is the law. The very definition of accidental injury—"one that happens without the concurrence of the will of the insured" (Richards on Ins., Sec. 190)—precludes intentional suicide by a sane person.

"Self-destruction is **not** classed as an **accident** except it appears that the suicide was unconscious of the act or of the physical effect thereof, or was driven to the commission of the

deed by an insane impulse which he had not the the power to resist. * * * **If he (the insured) committed suicide while sane his death could not be deemed accidental.**"

Fid. & Cas. Co. v. Wiese, 182 Ill. 498.

When the legislature of Missouri enacted the suicide statute it was expressly confined in its operation to "policies of insurance on life". The contention of counsel for defendant in the Logan case was that by the expression "insurance on life" the legislature differentiated between life insurance (generally) and accident insurance (or policies, which insured life incidentally, or only against death caused in a particular manner, *i. e.*, by accident). This contention, however, was repudiated by the Court in the Logan case, and the statute held to be applicable to policies of accident insurance as well as to policies of insurance on life, because, forsooth, a policy which insured against death by accident, was, to that extent, "insurance on life", and therefore came within the letter and spirit of the statute; and it being **conceded in that case** that if the statute was applicable, **the insurer was liable,** judgment against the company was affirmed. In other words, it was **expressly admitted** in the Logan case that the death was **accidental** (*i. e.*, of necessity, that the suicide was insane, otherwise it could not have been accidental), and the defendant having made this concession—having admitted liability if the statute was applicable to an accident policy, the **only question** that the Court could pass upon, or pretended to pass upon, was **whether the statute was applicable to accident policies.** The Court held that the statute was applicable to such policies, and whatever may be thought of the reasoning of that opinion and decision, inasmuch as it is a construction of a State statute by the highest Court of the State, the trial court was, and this Court is, bound to give effect to and follow that construction as the law of the State, which the Federal courts are in duty bound to administer.

We submit, however, that this Court is not required to do more than follow the construction given to this statute by the State Court, and that upon the questions: (1) whether the facts in this record bring this case within the statute, and (2) whether the statute is susceptible of such construction as will make the insurer liable under an accident policy for the **suicide of a sane man,** are totally different questions from the sole and only question decided in the Logan case, which was whether the statute was applicable to the policy there in controversy. Moreover, upon these questions, which were not passed upon in the Logan case, the defendant should have, and is entitled to have, the independent judgment of this Court.

As was said by this Court in Hotel Company v. Jones, 193 U. S. 532, 544:

"As, however, the very object of giving to the national courts jurisdiction to administer the laws of the States in controversies between citizens of different States was to institute **independent** tribunals which it might be supposed would be unaffected by local prejudices and sectional views, it would be **a dereliction of their duty** not to exercise an independent judgment **in cases not foreclosed** by previous adjudication."

In the Logan case the Court held that the statute was applicable to accident policies and, this being so, it was **conceded by the parties** that **if** the statute was applicable, the **defendant was liable.**

Here the question is: The statute being applicable to accident policies, (1) does it create liability for **suicide by a sane man,** and (2) does the statute limit the right of parties to contract in the same policy for one sum in case of death by suicide and for other sums in case of accidental death occasioned otherwise than by suicide?

The first question stated above was conceded in the Logan case, and hence could not be, and was not, decided; and the second question was not discussed by counsel or the Court and was not decided or referred to in the opinion, and could not

be, for that was a policy which provided for **no liability** in case of suicide, whereas the policy in this case provides for **some liability.**

That there may be no question as to just what was before the Court for decision, and just what was in fact decided, in the Logan case, note the following excerpts from that opinion:

"During the progress of the introduction of the defendant's testimony in the court below, the **trial was abruptly terminated,** by this announcement on the part of the counsel for the defendant: 'We want this case to go up on **the** question as to whether or not the suicide statute makes suicide a defense in a case of this kind and **applies to a policy such as this,** and **if so,** then the jury should be instructed to **find for the plaintiff,** and (that) there may not be any question upon that point, and for the purpose and in order to have the matter clear, we withdraw all objections to the proof of death, and admit, for the purpose of this trial, that the proofs of death were furnished. It is a question we are all interested in, and it is a question that ought to be decided both for the company and for the assured.' To which announcement the Court then replied: 'Your position is that **if** section 5855 of the statute **applies to this kind of a policy,** then, **under the testimony in this case, the plaintiff is entitled to recover,** otherwise not.' To which Mr. Warner of counsel for defendant responded **'that is it precisely.** That narrows it down so that the case will be stripped of all technicalities as to evidence' " (pp. 119 and 120).

The Supreme Court says:

"Accepting **the issue of law** tendered by the defendant's counsel, the Court instructed the jury to return a verdict for the full amount of the policy with interest. From the judgment rendered upon the verdict returned in obedience to the Court's instruction, after the usual motions and preliminaries, defendant has prosecuted its appeal to this Court, presenting and discussing here **but the one question:** Is suicide in this State a valid defense to an action upon a policy of accident insurance **such as the one in controversy,** where it is not shown that the insured contemplated suicide at the time he made his application for the policy (and **it being admitted** that the assured afterwards came to his death from external, violent and **accidental means)?** (p. 120).

'Insurance on life' (says the Court) 'includes **all policies** of insurance in which the payment of the insurance money is

contingent on loss of life. **The policy in controversy** certainly corresponds to that definition, and **must be held to be subject to the provisions of Section 5855.** The judgment of the Circuit Court will be affirmed' " (p. 126).

So that it is clear that the only point attempted to be ruled in the Logan case, the only point properly before the Court for decision—the only point in fact decided was—that **the suicide section** (5855) **was applicable to the policy in controversy.** Here, not only is there a very different policy in controversy, but the law there decided is conceded to be the law, and the questions here for decision, *i. e.* (1), whether the statute makes the company liable on an **accident** policy for suicide by a **sane man** when in the absence of such statute suicide never was and never can be an accident; and (2) whether a contract for limited liability in case of suicide, accidental or otherwise, is prohibited by the statute, were neither discussed, considered nor decided in the Logan case.

The scope and effect of the decision and opinion in the Logan case is succinctly stated by Judge Van Devanter in the opinion of the Court of Appeals in this case (144 Fed. 356—Rec. 33), Judge Van Devanter says:

"But that our reference to that case may not be misunderstood, it may be properly observed that we do not understand it as holding that, by reason of the statute, **every** policy of insurance on life, issued by a company doing business in Missouri to a citizen of that State, covers death by suicide, **irrespective of the scope and character of the policy.** To illustrate, we do not understand it as holding that the effect of the statute is, that an insurance against **death** resulting from a **particular disease,** or from the hazards of a **particular employment,** or **mode of travel,** is **also** an insurance against death by **suicide.** Rightly considered, the holding in this respect is **nothing more** than that the **statute is applicable** to insurance against loss of life through **external, violent** and **accidental means,** because **this,** as was held in Accident Ins. Co. v. Crandall, 120 U. S. 527, 533, 534, **includes suicide by one who is insane.** That this is so is shown, as we think, by the Court's statement (p. 120) of the **sole question** presented for decision, viz.: 'Is suicide in this State a valid defense to an action upon

a policy of insurance issued by an accident insurance company, containing provisions such as the one in controversy, where it is not shown that the insured contemplated suicide at the time he made his application **(and it being admitted that the assured afterwards came to his death from external, violent and accidental means)?'** And by that portion of the opinion (p. 123) in which it is said: 'When a policy covers loss of life from external, violent and accidental means alone, why is it not insurance on life? Such a provision incorporated in a general life policy admittedly would be insurance on life, then why less insurance on life because not coupled with provisions covering loss of life from unusual or natural causes as well? If one holds a general life policy and an accident policy, and is killed by lightning, or commits suicide, **so that he may be said to have died by accidental means,** both the companies should pay, and the stipulation **against liability** in the event of suicide in the policies should be no more a defense against the suit upon the accident policy, providing against death from accidental causes, than against the policy which goes further and covers death from other causes as well.'

"But" says the Circuit Court of Appeals, "the question upon **this** record is **not solved** by **ascertaining** that the **statute is applicable** to the policy sued upon. It must also be ascertained * * * whether it **goes further** and prevents all **discrimination** against suicide as a risk."

We submit, therefore, that the Logan case does not rule this case and that no part of the opinion in that case has any bearing on any of the questions presented by this record, and that the statement in plaintiff's brief (p. 5) that the Logan case holds that the suicide section "means that if in any form or manner there is insurance on life, then in case of suicide there is absolute liability", is wholly erroneous when that case is carefully considered.

Keller Case.

The differences between Keller v. Travelers' Association, 58 Mo. App. 557, and the case at bar, is that the Keller case construed a general **life policy,** not an **accident policy,** and in Keller's case there was **no insurance** for **any amount** in case

of suicide. The policy there simply provided that in case of suicide the defendant "should be liable for the then **net value of the policy**, per the American Experience Table of Mortality, with 4½% interest"; that is to say, the "reserve" or surplus premiums paid by the insured.

The provision is for **forfeiture** of the insurance and the **return** of the **unused portion** of the **premiums paid.** Net value or reserve is the excess of premiums paid over current cost of the insurance. Mutual Reserve v. Roth, 122 Fed. 853.

The difference between what the insured has paid and the cost of the insurance is the "net value" or "reserve" of the policy.

"To forfeit this excess which fairly belongs to the assured, and is fairly due from the company and which the latter actually has in its coffers * * * would be rank injustice. It would be taking away from the insured that which had already become substantially his property.

N. Y. L. I. Co. v. Statham, 93 U. S. 24, 34.

So that in Keller's case there was **no insurance** in case of suicide.

Again we respectfully submit that the judge writing the opinion in the Keller case was mistaken in the public policy attempted to be formulated by the statute in question. It may be conceded that that statute was an expression of the public policy of the State of Missouri, but it was not intended, as Judge Bond puts it, "to limit the **power to contract** for a **lesser liability** in case of death by suicide". The statute limits and excludes the power to contract for **no** liability, but it does not undertake to hamper or limit the right of the insurer to contract for a lesser liability in case of suicide than the liability provided in other contingencies, if by the contract **some** liability is provided for. It prohibits contracts **forfeiting** the insurance in case of suicide, but it **does not**, in terms or by implication, fix either the minimum or maximum liability of the company in case of suicide. Neither does it undertake to say that in case of

death the insurer must provide indemnity in the same amount regardless of the circumstances attending such death.

The trial court was not, nor is this Court, bound by the decision of the Missouri Court of Appeals in the Keller case, for two reasons, first the statements in the opinion are *obiter*, and, second, the Missouri Court of Appeals is not the highest Court of the State which **settles** the law of the State, but is a Court of inferior and limited jurisdiction.

First: The expressions of Judge Bond in the Keller case are wholly *obiter*. They are merely his individual views expressed incidentally in the course of the opinion, expression by which even his associates who concur in the decision, are in nowise bound. They do not rise to the dignity of a decision of the question thus discussed, for that question was not in the Keller case. The record there did not call for an opinion upon, much less a decision of, the question whether the statute permitted a contract for a lesser liability, for the contract there was for no liability—for the return of that part of the premiums paid which constitute the "net value" of the policy. There was in that case no agreement for the payment of a certain and substantial amount, as is the case here. These expressions in the opinion in the Keller case are based upon implications from the statute—they are merely individual deductions as to the public policy created by the statute rather than a construction of the language of the statute.

In Carroll v. Carroll, 16 How. 275, 14 Law Ed. 940, this Court, speaking through Mr. Justice Curtis, says:

"It must be remembered that we are bound to decide a question of local law, upon which the rights of the parties depend, as well as every other question, as we think it ought to be decided. * * * If the construction put by the Court of a State upon one of its statutes was not a matter **in judgment**, if it might have been decided either way without affecting any right brought into question, then, according to the principles of the common law, **an opinion** on such a question is not a decision. To make it so there must have been an **application** of the **judicial mind** to the **precise** question necessary to be de-

termined to fix the rights of the parties and decide to whom the property in contestation belonged. And therefore this Court and other courts organized under the common law has **never held itself bound** by any **part** of an **opinion**, in any case, **which was not needful** to the ascertainment of the right or title in **question between the parties.**"

This case has been followed in
Northern Bank v. Porter, 110 U. S. 615; 28 L. Ed. 261;
St. L. R. R. v. T. H. R. R., 145 U. S. 404; 36 L. Ed. 753.

Mere **general expressions** which go beyond the case may be respected, but **do not control the judgment** in a subsequent suit when the very point is presented for decision.

Cohens v. Virginia, 6 Wheat. 399.

"**Expressions** used by a State Court in construing a statute, **when other points**, and not the one at bar, were under consideration, **do not bind the Circuit Court of the United States**, and are, indeed, no precedent for the Court delivering the opinion."

Matz v. C. & A., 85 Fed. 180, 183;
Bennett v. Boggs, Fed. Cas. 1319, Bald. 60.

This Court has said it will follow the "latest **settled** adjudications" of the State Courts, but not oscillations in the process of settlement.

Gelpcke v. Dubuque, 1 Wall. 175, 205;
Leffingwell v. Warren, 67 U. S. 603.

"Where a question of this character is **well settled** by the decisions of the **highest Court** of the State, it will be followed by the United States Courts, even though it may have understood the law otherwise. They will follow the latest **settled** adjudications, but it can not be expected to follow oscillations in the process of settlement."

Myrick v. Heard, 31 Fed. 241, 243.

How can it be asserted that the questions presented here are **settled** by the Keller case, when it is manifest that the precise point here, *i. e.*, the right of the company to limit its liability in case of suicide (the amount fixed being substantial) could not arise for **decision** in the Keller case, and only arose *arguendo* in the discussion indulged in by Judge Bond in his opinion. These were mere expressions indulged in while deciding **another point**—not the point raised here.

Moreover, the question here is rather the **application** of the statute properly construed (and construed, if you will, as it was construed in the Logan case, as being applicable to this policy) **to the contract**, than a **construction of the statute.**

The Court of Appeals (8th Circuit) in Casserleigh v. Woods, 119 Fed. 308, 313, in an opinion by the late Judge Thayer, recognizing the rule that the Federal Courts are bound to follow and adopt the authoritative construction by the State Courts of its own statutes, has this to say of the **application** of such construction:

"This construction by the State is binding, as a matter of course, upon the Federal Courts, it being an authoritative construction of a local law. But we are of opinion that when it becomes necessary to **apply the statute**, as thus construed by the local Courts, **to a particular contract**, and determine upon a consideration of all its provisions, **whether it is violative of the statute**, a Federal Court is entitled to express an **independent judgment.** In the case last supposed the question is one of **general law**, rather than a statutory construction, and the decision of the Federal Court thereon ought to be something more than a mere echo of a previous decision of the same question by a Court of co-ordinate jurisdiction, although such a decision is entitled to the highest respect, and should be regarded as **persuasive authority.**"

This rule was reiterated in the case of Ottumwa v. City Water Co., 119 Fed. 315.

Far from conceding that the Keller case was "precisely in point", as counsel asserts (Petitioner's Brief, p. 6) the trial court refused to be bound by it, and the Circuit Court of Ap-

peals not only expresses the view that the opinion in the Keller case is "clearly wrong", but holds that, if it is distinguishable from the Federal cases cited and held inapplicable, it, at most, only "**tends** to sustain plaintiff's contention" (Rec. 33).

Second: The Missouri Court of Appeals is an inferior court of limited jurisdiction (Const. of Mo., Sec. VI, Art. 12) Rec. 21, 23).

It was of one branch of the very court which decided the Keller case (Missouri Court of Appeals, Kansas City Division), that Mr. Justice Brewer said:

"This case comes clearly within the line of the cases heretofore decided by this Court * * * . In the course of the various opinions that I have had occasion to express, I have stated my own views and the reasons why, in deference to the opinions of the other Judges in this district, including the Presiding Justice, I have made those decisions. In the last, or next to the last, of those cases, I stated that that would be the rule of this Court until there had been an authoritative declaration by the Supreme Court of the United States **or the Supreme Court of the State of Missouri** to the contrary. Now there is presented a decision of the **Kansas City Court of Appeals** which it is claimed enunciates views different from those announced heretofore, **and in harmony with the opinions that I personally hold,** and I am asked to reverse the line of decisions here. **That is not an authoritative exposition of the law of Missouri.** The St. Louis Court of Appeals may rule one way and the Kansas City Court of Appeals another. **There is but one authoritative expounder of the Missouri statutes** in this State, and **that is your Supreme Court,** so the petition for rehearing will be denied."

Freund v. Yaegerman, 27 Fed. 248.

Federal Courts are not bound to follow the decisions of inferior State Courts.

1st Garland & Ralston Pr., p. 661, note;
Guano Co. v. Morrison, 2 Woods 395;
Von Brocklen v. Brooklyn R. R., 5 Blatch. 379.

"The decision of the Court of Appeals (says Judge Phillips, Rec. 21) is not binding on this Court, as it is not a court of the highest jurisdiction in the State."

The Court of Appeals (8th Circuit—Rec. 33) says:

"As the St. Louis Court of Appeals, while of high repute, is not a court of last resort, **whose decisions settle the law of the State,** we must give effect to our own interpretation of the statute."

Lastly: Opposing counsel finally appeal for the application of the "harmony rule" as laid down in Burgess v. Seligman, 107 U. S. 20. To apply this rule is to concede that this Court is not bound to follow the Keller case as an authoritative interpretation of the local law. That is to say, if this Court is to follow the Missouri Court of Appeals merely from a desire to harmonize the decisions of two courts of co-ordinate jurisdiction, that it does so, not because of the impelling force of **duty** or **obligation** under the law, but from the desire to conform its decisions to the decisions of another co-ordinate tribunal in the same jurisdiction. If the harmony rule is applied, then this Court will not conform its opinion to that of the State Court of Appeals unless it is persuaded that the State Court is, or at least probably is, right in its conclusion. In applying this rule the State decision, at most, is but persuasive authority.

From this standpoint we suggest that, considered in the light of its necessary results, no more vicious decision was ever rendered by a Court. We mean no disrespect to the State Court. We refer expressly to the necessary results that flow from that decision and not to the motives that occasioned it. Of necessity, it must follow, that the adoption of the expansive construction of this statute, as announced by the State Court, inevitably tends to increase the number of suicides and the circumstance under which suicides may recover the largest amount named in the policy, and as the statute under con-

sideration necessarily encourages suicide in all cases within its letter, so also any construction which enlarges or expands its terms, to cases not strictly within its letter, necessarily increases the number of persons who will, or may, profit by its terms; and in the ratio that this liberal construction increases the possible cases that may come within the protection of the statute, such construction increases the number of persons who will, or may be, encouraged (from financial distress and despondency and a desire to protect dependents or creditors) to resort to this course for relieving themselves of life's burdens. A construction producing such results, which offers such encouragment, we feel confident, will never be adopted by the highest court of the land, and to it (as to the trial court and the Circuit Court of Appeals) the opinion of the Missouri Court of Appeals, if only persuasive authority, will not commend itself as sound in theory or benificient in results, and that the tendency of this Court will be, and should be, to confine the operation of the statute to the narrowest possible limits.

In considering the persuasive influence of this case it should be constantly borne in mind that the contract there under consideration was not an **accident** policy, but a **general life** policy, insuring against **death from any cause**, and in which not only was the premium much larger, but the premium covered, and was intended to cover, the **cost of insurance** against **death from any cause**, (that case thus presenting equitable considerations which are entirely absent in this case); and the premium in Keller's case covered, in addition to the **current cost** of general life insurance, that excess accumulation (collected during the earlier years of a life policy to offset the increasing mortality due to increasing age) known as the "reserve" or "net value", and that it was the **character of the policy** and the **amount** and **purpose** of the premium which evoked from Judge Bond the expression indi-

cating that this statute should be expansively construed. Thus he says:

"The fact that the **premium warranted** and the policy guaranteed **full insurance** in case of **death** of the insured **from any cause,** not specified in the clause set up in the defendant's answer, demonstrates that said clause was **designed** to **modify** the **liability** of the insurance company if the defendant committed suicide. It necessarily follows, if this stipulation as to **decreased liability** in the event of suicide is enforced, that it is some defense to the **OTHERWISE full liability AGREED upon in the policy.**"

In the case at bar it can not be said that the **premium,** $6.25 (fixed without regard to and intended only to cover the cost of death due to accidental casualty), **warranted** the company in paying either for death generally or death from causes not clearly of the character expressly insured against by its contract. On the contrary, the reasoning indulged in by Judge Bond, applied here, excludes liability, for, if the premium there (a general life premium), warranted full insurance in case of death from any cause, by the same token the premium here (an accident premium) would not warrant insurance against death from any cause not contemplated in fixing the premium.

Again, Judge Bond says the "policy guaranteed full insurance in case of the death of the insured from any cause", whereas here there is no guaranty of insurance in case of death from any cause, but only insurance against death caused in a particular manner.

Again, Judge Bond says that in Keller's policy the clause was "**designed** to **modify** the **liability**" of the insurance company, which can not be the case here, for there is no general liability for death generally, including death by suicide, which the clause in question could be designed to modify.

The Keller case deals with a contract, the whole scope and nature of which is so variant from the contract under consideration, that to appy the general expressions there used to the case made by this record, is to produce utter confusion

and to extend the doubtful beneficence of that case to a situation where all its underlying equities are wholly wanting.

Opposing counsel cites two Federal Court cases (Knights Templar v. Berry, 50 Fed. 511; Knights Templar v. Jarmon, 104 Fed. 638; s. c. 187 U. S. 199) as upholding his position. His contention in this respect was so conclusively answered by the Circuit Court of Appeals, that an appropriate quotation from the opinion of that Court leaves little if anything more to be said. Referring to these cases the Court of Appeals said (Rec. 33):

"The policy sued on in each attempted, in terms, **or in effect, to eliminate suicide** from the risks **covered** by it, and to provide that in the event of the death of the insured by that means, the insurer would be liable only for the **re**payment of **what it had received** in the way of assessments. Thus, instead of **accepting** suicide as a **risk**, the policy attempted to make it a **ground** for completely **avoiding** the right to **any** insurance."

In support of this conclusion, we direct the Court's attention to the provision of the policy in the Berry case (46 Fed., 439, 441). It is: "In case of self-destruction * * * **this policy shall become null and void,** * * * provided * * * this company will pay such an **amount as the member shall have paid to this company** on this policy in assessments on the same without interest"; and in the Jarmon case the provision was in precisely the same form, and is so quoted in 187 U. S. at page 200.

It will be seen, therefore, that in both of the Federal cases cited by the plaintiff, the provision was in terms and in effect that **suicide should avoid all insurance** and that the assessments should be **repaid,** this very repayment evincing that the contract was to be abrogated *ab initio, i. e.*, the insurance was avoided—eliminated in case of suicide *in toto.*

Opposing counsel contends that his view of the law is the construction "which has been adopted by the profession and

accepted by this Court''. With all due respect to counsel, I beg leave to differ with him. There has been no construction by the profession genererally, for or against his contention, and that this is so must be manifest when both the trial judge and the three Judges of the Court of Appeals decided against that construction, and this, too, without reference to the "construction by the profession'' to which counsel refers. I fear my esteemed friend has chosen to accept the kindly curbstone encouragement of friendly associates as a general professional construction. Nothing is more unreliable, as the writer of this brief has occasion to know.

IN CONCLUSION.

We submit (1) that the Logan case decides nothing that has not always been conceded in this case by counsel and by both the trial court and the Circuit Court of Appeals—merely that the statute was applicable to the policy there in controversy, which is a policy wholly different in scope and purpose from the policy in suit; (2) that the Keller case does not bind the Federal Courts, because it is the decision of an inferior court and its pertinent expressions are wholly *obiter*, and, further, as mere persuasive authority, its reasoning should not be endorsed or followed; (3) that the Federal cases relied upon were decisions concerning policies so essentially different from the policy at bar as to make the expressions used therein wholly inapplicable to this case; (4) that every reason appeals for such a restrictive construction of the statute as will confine its operation to cases clearly within its terms, and (5) that the plea of the defendant that it contracted to pay $500, and not $5,000, as alleged, is not within the letter or the spirit of the statute, and should therefore be sustained.

Respectfully submitted,

JAMES C. JONES.

JONES, JONES & HOCKER,
BOYLE, GUTHRIE & SMITH,
J. J. DARLINGTON,
Of Counsel.

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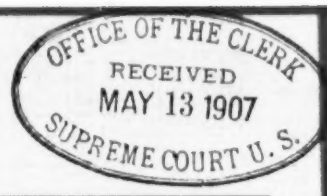

IN THE

UNITED STATES SUPREME COURT.

No. 258.

AMANDA M. S. WHITFIELD (Plaintiff in Error),
Petitioner,

vs.

ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut
(Defendant in Error),
Respondent.

PETITION FOR REHEARING AND ARGUMENT IN SUPPORT THEREOF.

JONES, JONES, HOCKER & DAVIS,
BOYLE, GUTHRIE & SMITH,
Attorneys for Respondent.

J. J. DARLINGTON,
Of Counsel.

St. Louis Law Printing Co., 311-315 Locust. Bell, Main 1819; Kinloch, Central 986 L.

IN THE

UNITED STATES SUPREME COURT.

No. 258.

AMANDA M. S. WHITFIELD (Plaintiff in Error),
Petitioner,

vs.

ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut (Defendant in Error),
Respondent.

The Ætna Life Insurance Company, defendant in the above entitled cause, moves the Court to grant it a rehearing in this case for the following reasons:

1st. The opinion proceeds upon the assumption that there was general insurance covering suicide which is attempted to be cut down or limited by the clause providing for the payment of $500 in case of suicide, whereas this is not the contract, and the assumption is unwarranted.

2nd. The opinion delivered is opposed to the last controlling authority of the Supreme Court of Missouri, Læssig v. Travelers' Ins. Co., 169 Mo. 272.

JAMES C. JONES,
Attorney for Ætna Life Ins. Co.

We certify that the foregoing petition is, in our opinion, well founded, and is not made for the purpose of delay.

James C. Jones

ARGUMENT IN SUPPORT OF MOTION FOR REHEARING.

I.

We hesitate to press this case upon your Honor's attention again, and would not do so but for the fact that the opinion proceeds, and is wholly based, on an utterly false premise, and believing, as we do, that if this fallacy exists and is perceived by the Court, it will not refuse, despite the customary fate that usually attends motions of this character, to grant the request that this case be reheard.

The basic assumption in the opinion delivered is that there is primary liability for $5,000, which, disregarding the suicide clause, is payable to the insured under the facts in this case, and that this liability is attempted to be limited or cut down by the clause agreeing to pay $500 in case of suicide, whereas in fact there is no primary liability for $5,000 for which the defendant is liable under the facts stipulated, and the provision relating to suicide does not attempt to limit or cut down any previously incurred liability.

The only insurance is against **death caused in a particular manner**, *i. e.*, caused by "external violent and **accidental** means".

Suicide by a sane man is not an accident.

The insured here committed suicide while sane, and there was no attempt to prove he was insane.

On this state of facts there is in this case no insurance for $5,000 (the principal sum) against death by suicide while sane, because death so caused is **not an accident**, and the insurance is only against **accidental** death.

Hence, when the Court says (at page 5 of the opinion) that "the question arises whether the contract of insurance

limiting the recovery to one-tenth of the principal sum specified was valid and enforcible", it states as the question for decision a question that does not and can not arise on this record, because the provision that one-tenth of $5,000.00 shall be paid in case of suicide, is not a provision **in limitation of** an amount **otherwise recoverable**, but is a provision fixing an amount of **original liability**; a provision but for which **nothing** would be **recoverable.**

Will your Honors test the case this way? Eliminate the suicide provision from the policy altogether. The agreement would then be to pay $5,000 in the event of **accidental** death, with no limitation for a lesser amount in case of suicide. Would, then, death, caused by suicide intentionally committed, be death by external violent and **accidental** means? Clearly not unless the Court means to hold that **sane suicide** is an **accident.**

Analysis of the policy will demonstrate that the suicide provision is not a **limitation** of the amount **otherwise recoverable** except for this **limitation**, but is an **original obligation** to pay $500 for suicide embodied in a contract where there would be no liability at all for sane suicide except for this original obligation.

The Missouri statute provides that "suicide shall be no defence", etc. No defence to what? Clearly to an action on a contract **where liability for suicide exists.** Liability for **sane suicide** does not exist under an accident policy and the statute does not undertake to create liability under an **accident** policy for **sane suicide**; yet the effect of this opinion is to accomplish just that result, *i. e.*, to **create** liability for suicide by a **sane** man on a policy where the obligation is to pay only for **insane** suicide, because only **insane** suicide is an accident.

Suppose a policy issued with no provision as to suicide at all—with no provision which either limits the amount of re-

covery or precludes recovery in the event of suicide. Suppose too that the insured under such a policy, without contemplating suicide when he applied for it, yet, after it is issued, while sane, deliberately takes his own life. Shall there be a recovery in such a case on a policy which insures only against **accidental** death? Is such a death **accidental?** Yet this is the clear and necessary result of your Honors' decision.

But the statute only says it shall be no **defense** that the insured committed suicide.

It does not **create** liability for suicidal death where the **character of death** is not such as is **insured against.**

In a **life insurance policy** there is insurance against death which **includes** suicide, and the statute is applicable.

In an **accident policy** there is insurance against suicide by an **insane** person, for this is **accidental** death.

In an **accident** policy there is **no insurance** against suicide by a **sane** man for this is **not accidental** death, and to this latter situation **the statute can not apply.**

The fallacy indicated is, we think, manifest in the second paragraph of the opinion. Your Honors ask, "Can an insurance company and the insured lawfully stipulate that in the event of suicide, not contemplated by the insured when he applied for the policy, the company shall not be bound to pay the principal sum **insured** but only a given **part** thereof?"

The answer to this question is, obviously, if the company by its contract and on the facts of the case is **obligated to pay the principal sum, except** for a stipulation in **limitation of,** or in **reduction of,** this obligation, and can **avoid** such liability **only** by reason of a provision in **limitation of, or reduction of,** this obligation, then it can not lawfully so stipulate. But if the company by its contract and on the facts of the case (in the absence of such stipulation) **is not obligated for the**

principal sum at all, and the stipulation is not in limitation, of, or reduction of, its obligation, but the **stipulation itself creates an obligation,** which otherwise does not exist, then it can lawfully so stipulate, for it is then no "agreement to pay only a given part" of its liability.

Your Honors hold that the contract is an **"evasion"** of the statute and tends to **"defeat the objects"** for which it was **enacted.**

If suicide by a sane man is not an accident, and the company (except for the stipulation) is **not liable at all,** then certainly it is not an **evasion** of the statute to stipulate for liability for $500 where, otherwise, no liability exists.

So, too, the object of the statute was not to **create liability** where under the contract **no liability was assumed,** but to prevent a stipulation exempting the company from a liability otherwise assumed. The statute was designed to preclude a **defence** to an obligation otherwise existing; it was not designed to make **intentional** suicidal death by a sane man an **accident.** So that in the end the questions presented by this record are:

Is suicide by a sane man accidental death?

Does the statute make suicide by a sane man accidental death?

These questions, in effect, are answered affirmatively by the opinion delivered, and it is because of our firm belief that these answers—this effect—is unintentional on the part of the Court, that we invite your Honors' attention to the case again and ask that it be reheard.

Any process of reasoning or construction that produces such monstrous results (morally speaking) as to make **intentional self-murder a thing against which parties can not contract,** a thing which they must encourage, a thing which they

must treat as **accidental** despite the fact that it is concededly **intentional,** certainly deserves the extreme o consideration before it is finally settled and passes int the realm of declared law. If the law is so written, if your Honors feel bound to so declare it, having done that which fully performs our duty in appealing to the different, the better, reasoning, we must be satisfied, for we can not do more, but we most respectfully urge that the enormity of the consequences (again speaking from the standpoint of morals) coupled with what we have pointed out as the seeming (and to us demonstrated) basic fallacy on which the opinion proceeds, justifies this Court in giving this case such further consideration as will assure it that the conclusion announced is clearly right.

So, too, where the Court says "whatever tends to **diminish** the plaintiff's **cause of action,** or to defeat recovery in whole or in part, amounts in law to a defense".

Conceding this; If, in the absence of the stipulation to pay $500 for suicide, there was no obligation to pay $5,000 for suicide by a sane man, how can it be said that the stipulation **diminishes** plaintiff's cause of action? Her cause of action is the policy and death within its terms. Whitfield certainly did not die from accidental means. (Acc. Ins. Co. v. Crandall, 120 U. S. 527.) His death was **intentionally** caused by himself. Consequently plaintiff had no cause of action on **that part of the policy** which insures against death through external violent and **accidental** means in the sum of $5,000. As to this cause of action (her right arising on this part of the contract) the defense is a **general denial,** *i. e.*, that Whitfield did not come to his death by **accident,** and it is stipulated that he did not, for it is stipulated he committed suicide **intentionally,** and suicide is not accident except in the

exceptional case of insane unintentional self-destruction, and plaintiff did not bring the case within this exception although it was stipulated (of record) that she might do so if she could.

Hence, as to this cause of action (her cause of action for $5,000 for accidental death) suicide is not interposed as a defense, but the general issue (*i. e.*, that Whitfield did not die through accident) is interposed as a defense, and clearly this defense is not inhibited by the statute. And as **suicide is not** interposed as a defense at all to **this** cause of action it follows that suicide is not interposed to "diminish" her cause of action "in whole or in part".

As to the cause of action arising out of the stipulation to pay $500 in case of suicide, sane or insane, no defense whatever is made. On the contrary the defendant has at all times stood ready to discharge, in full, wholly undiminished, its full obligation in this respect.

We think that a more careful analysis of this policy will disclose that there are distinctly two contracts, viz.:

First: A contract to pay $5,000 for accidental death; (which **includes** suicide by an **insane** man and **excludes** suicide by a **sane** man).

Second: A contract to pay $500 in case of suicide, whether sane or insane.

And that the **obligation** of **each** of these contracts is **separate and distinct**, and the one is not in limitation of the other, **or** if the second is in limitation of the first it is only so in the case of **insane** suicide which is the only instance where suicide is or can be an **accident.**

While it is true, as your Honors say, "When the company denied its liability for the whole of the principal sum, it certainly made a defense as to all of that sum except one-tenth", its defense as to this nine-tenths was not "that the insured

committed suicide", but "that the insured did not die from accident". The statute does not preclude "any defense", but only "a defense that the insured committed suicide".

Adopting your Honors' subdivision of the contract, as to nine-tenths of the principal sum (or more accurately speaking as to the whole principal sum) the **defense** was that the death **was not accidental**—nothing more; as to the other one-tenth (that is as to the special provision for $500 for suicide) there was no defense whatever.

So that conceding that the "legislative intent was to cut up by the roots any defense as to the whole and every part of the **sum insured,** which was grounded upon the **fact of suicide**", yet it is seen that as to this nine-tenths the **defense** was not grounded on the fact of **suicide,** and as to the remaining one-tenth there was no defense at all.

However, in our judgment, to consider this contract as providing ten-tenths insurance on the one hand, and only one-tenth on the other, is calculated to produce confusion.

The stipulation providing insurance for $500 in the event of suicide is not an insurance for one-tenth of the **sum insured;** it is not a one-tenth part of the principal sum carved out of the whole. A right of action on the primary cause of action, *i. e.*, for accidental death, is a right to the whole, or ten-tenths. The cause of action on the suicide stipulation which, by way of description, refers (it is true) to one-tenth of the principal sum, is a right to $500 for death by suicide, which may or may not be accidental, and this cause of action is for $500 independent of and wholly disassociated from the cause of action for $5,000. In other words the reference to "one-tenth of the principal sum" is nothing more or less than a convenient way of fixing the amount payable for suicide and is not an effort to reduce or limit the amount otherwise payable for suicide, be-

cause **but** for this **stipulation nothing** is payable in the event of **suicide** (save only in the exceptional case of insane suicide).

In closing this portion by this discussion, we beg to draw the attention of your Honors to this quotation of the opinion filed: "The manifest purpose of the statute was to make all inquiry as to suicide wholly immaterial, except where the insured committed suicide. Any contract inconsistent with the statute is void", and to inquire whether this statement is made advertently and heedful of the fact that it of necessity refers to an accident policy. If so, then it is deliberately held that **because of the statute suicide is always an accident** regardless of sanity or insanity; and it is because we feel that the statement is inadvertent, and that in making it your Honors for the nonce lost sight of the character of the policy, that we insistently, but with the utmost deference and respect, beg to direct your Honors' close attention to the language employed and the necessary effect of the conclusion announced. If this is said of a life policy as contradistinguished from an accident policy there would be less occasion for this insistence. In such a case there is general **liability** for **suicide** and an exception in limitation of, or in reduction of, this general liability in the event that suicide does "tend to diminish" the amount otherwise recoverable; but certainly this is not so as to an accident policy which does not insure against intentional suicide by a sane man but only against unintentional suicide by an insane man.

Your Honors cite in support of the proposition just quoted, Federal cases which deal only with life policies as contradistinguished from accident policies, and the Logan case from the Missouri Supreme Court, and in this case and in that very part of it which your Honors quote, the Court indicates that it had in mind the very point which we are urging now, for the Missouri Supreme Court says (quoted on p. 6 of your Honors' opinion):

"If one holds a general life policy and an accident policy, and is killed by lightning or commits suicide, **so that he may be said to have died by accidental means**, both the companies should pay", etc.

Again in the Logan case (at page 120) the Court says that under the statute the company is liable on an accident policy in case of suicide, "it being **admitted** that the assured came to his death from * * * **accidental means**".

We beg your Honors' consideration of that part of Judge Vandeventer's opinion in this case which deals with this suggestion, and which is referred to and quoted on pp. 39, 40 and 41 of our brief submitted at the argument of this case.

Your Honors also cite the Keller case from the Missouri Court of Appeals, which for the reasons pointed out on pp. 41, 42 and 43 of the brief does not control this case, and ought not to influence the judgment.

II.

The opinion filed is in direct conflict with the latest decision of the Supreme Court of Missouri.

The contention we are making is supported by the latest decision of the Missouri Supreme Court on this subject (Laessig v. Travelers, 169 Mo. 272). Indeed, the opinion in the case at bar is wholly at variance with the Laessig case, and bearing in mind that it is the **law of Missouri** applicable to **accident policies** which this Court is called upon to decide, this, the latest enunciation of the highest Court of that State (to which your Honor's attention has not been previously called), ought to be carefully considered before the opinion under discussion is finally approved.

In the Laessig case the action was to recover on an **accident** benefit certificate. The answer denied the death was accidental,

and pleaded affirmatively that death was due to **suicide** for which the defendant was exempt under the terms of its certificate.

The plaintiff proved merely that the insured was found dead on a railroad track. There was nothing in the proof to indicate whether death was due to accident or to suicide.

In the course of the opinion the Court says:

"The plaintiff contends that the instruction (refused) correctly states the law. The two postulates laid down by the plaintiff for this contention are, first, 'In suits on contracts like the one in question plaintiff makes out a *prima facie* case by offering the certificate and **proving the accident** and that proofs of death were duly made' * * * .

"The first postulate is correct. But the difficulty is that plaintiff has not measured up to the requirements of the postulate, in this, that she has not **proved the accident**; that is, she has not proved that the death was due to an external **accidental** cause. She proved the death but not the **accidental** death. And the **proof** of the **accidental** death is the **essential prerequisite** and condition precedent, to a right to recover on an **accident** policy. This is the distinguishing feature between **accident** and ordinary **life** policies. * * * In suits upon accident policies the burden of proof is upon the plaintiff (subject to the limitation that it is **not** to be **presumed** as a matter of law that the **deceased took his own life** or was murdered) to show that the death was caused by external violence and **accidental** means. This is exactly what the policy or contract itself provides. And this is the rule laid down by Mr. Justice Harlan in the Supreme Court of the United States in Travelers' Ins. Co. v. McConkey, 127 U. S. 661."

Yet in the case at bar, although it is stipulated and therefore **"proved there was NO ACCIDENT"**, this Court permits a recovery on a policy which only insures against **accident.**

The Missouri Supreme Court in the Laessig case quotes from and approves the rule laid down in the Whitlack case, that **proof of suicide** is **not proof of accident.**

That suicide (without more) is not an accident in Missouri is manifest from the opinion in the Laessig case and the

authorities there cited. It is in support of this proposition solely that we cite the Laessig case. The general law is as there laid down. The suicide statute, according to the opinion filed in the case at bar, has the effect to change this general law so as to make **all suicide an accident.** This certainly is not the plain purpose of the statute, but results from an expansive construction of a statute which encourages crime and which construction is not supported by the Logan case and is directly contrary to the Laessig case, and is not, we think, what the Court intends to hold.

Until the opinion rendered in this case announced this doctrine, no Court had ever foreshadowed it. The opinion, while citing authorities which seemingly support this conclusion, do not do so in fact because they deal, in the main, with **life** insurance and not with **accident** insurance, and as has been pointed out, the Logan case carefully avoids announcing any such result.

In concluding this argument, we ask for the application of those principles enunciated for the Court by Justice Harlan in the McConkey case (127 U. S. 666) where it is said:

"There is no escape from the conclusion that, under the issue presented by the **general denial in the answer,** it was incumbent on the plaintiff to show, from all the evidence, that the death of the insured was the result, not only of external and violent, but of **accidental means.** * * * Upon the whole case the Court is of the opinion that by the terms of the contract the burden of proof was upon the plaintiff, under the limitations we have stated, to show from all the evidence that the death of the insured was caused from external, violent and **accidental** means."

Was this burden discharged when the plaintiff here showed deliberate self-murder by a sane man? Clearly not.

Does the statute make **self-murder** by a **sane** man an accident? We think the answer is, No.

It is only by **assuming** that the company is primarily bound regardless of the stipulation, and then construing the stipulation for $500 as in reduction, or limitation, of this **assumed** liability, that the Court arrives at the conclusion announced.

Is this **assumption** warranted?

If not the conclusion announced **must be wrong.**

It is for these reasons that we urge that this case be reheard.

JAMES C. JONES,
Attorney for Aetna Life Insurance Company.

J. J. DARLINGTON,
JONES, JONES, HOCKER & DAVIS,
of Counsel.

IN THE

preme Court of the United States

ANDA M. S. WHITFIELD and the STATE OF MISSOURI, *ex rel.* HERBERT S. HADLEY, Attorney General, *Petitioners*, vs. ETNA LIFE INSURANCE COMPANY of Hartford, Connecticut, *Respondent*,	No. 258

PLICATION OF STATE OF MISSOURI TO INTERVENE.

Now comes the State of Missouri by Herbert S. Hadley, its ...orney General, and renewing its application to intervene and be ...rd herein as made in the petition for *certiorari* heretofore filed, ...pectfully shows:

1. This application is made in the interest of the public and ...on behalf of thousands of policy holders who have, since 1879, ...ken out policies of insurance upon the faith of the validity of the ...w which, as construed by the Circuit Court and by the Circuit ...ourt of Appeals, destroys the legislative policy of the state as it ...s existed for the last twenty-seven years, and impairs the poli...ies so taken out.

2. The question presented is of great public interest. The ...gislative policy of a state is at stake; the validity of thousands of ...utstanding policies involved, and the decision of the court below, ...f permitted to stand, results in contrariety of opinion between the ...tate and federal courts, the law question involved being submitted ...pon the joint brief of intervenor and the petitioner.

3. It is safe to say that a great many of the ordinary life policies in force in Missouri attempt to, in some way, limit the amount of recovery in case of death by suicide. Several companies are, by the reported cases cited in the brief, shown to have policies limiting in case of suicide to the amount of premiums paid, while the respondent in such cases limits the recovery to one-tenth of the amount of the insurance. It would be an endless task to discover and compile the provisions made in this respect by the various companies doing business in Missouri. It is sufficient to suggest that if such a limitation be valid the insurance companies can, and probably will, apply it to the vast amount of insurance annually written in Missouri, and thus destroy the benefits and advantages given by a wholesome statutory provision.

As an illustration of how insurers have changed the forms of their policies, in order to obtain the benefit of the decisions below, attention is called to a printed slip now attached to the policies of the Maryland Casualty Company, which reads:

ENDORSEMENT.

"This policy, subject otherwise to its terms and conditions, is hereby amended to pay the following amounts for death of the assured or beneficiary by suicide:

For the suicide of the assured, sane or insane, one-tenth of the principal sum of the policy.

For the suicide of the beneficiary, sane or insane, under circumstances otherwise covered under the beneficiary clause of this policy, one-twentieth of the principal sum of the policy.

Attached to and forming part of policy No. ..... issued by the Maryland Casualty Company, of Baltimore, to.....
of.....State of .....
Dated at .....190..
Not valid unless countersigned by
.....
General Agent.

.....
President."

Presumably the other companies have done likewise. Suffice it they may do so.

4. The public interest in this case therefore affirmatively appears when there is considered the amount of the insurance annually written in the state, to which, if the decision made below stands, a clause *could* and probably will be inserted in the policy limiting the amount of recovery.

(*a*) In 37 Missouri Insurance Report, 1906, p. VI, this tabulation appears:

"Total premiums paid for life insurance in Missouri during the year 1905, to companies now licensed in this state. $15,268,222.41
Total amount paid by life insurance companies to Missouri policy holders, 1905. . . . . 4,977,772.65

Difference. . . . . $10.290,449.76"

In other words, in 1905, life insurance companies in Missouri collected in premiums $10,290,449.76 more than they paid out for losses.

(*b*) For some reason the reports of the Insurance Department seem not to show the number or amount of accident policies issued, but do show the amount of premiums received on accident policies in Missouri for 1905 to be $789,716.80, of which was paid out $394,668.10, and of which the Aetna Life Insurance Company received $92,747.78 and paid out $40,933.31. This appears in 37 Missouri Insurance Report, 1906, pp. LXIII, LXIX:

"TABLE V.

"Transactions in Missouri in 1905 by insurance companies other than life, compiled from statements on file in the Insurance Department of the state * * *.

	H.—Personal. Accident.		
Name of Company	Gross premiums received	Gross losses paid in 1905	Gross losses. incurred in 1905.
Aetna Life, Connecticut	$92,747.78	$40,933.31	$43,475.49
. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .
Totals	$789,716.80	$394,668.10	$400,230.77"

(*c*) The number and amount of life policies issued by all companies upon lives of citizens of Missouri in 1905 were 184,776, aggregating $29,099,990, of which the Aetna Life issued 903, aggregating $1,964,233. The number of life policies issued by all companies upon lives of citizens of Missouri which were outstanding in 1905, were 642,080, aggregating $90,872,045, of which the Aetna Life had 4,694, aggregating $9,727,952. This appears in 37 Missouri Insurance Report, 1906, pp. LXXXIV, LXXXV:

"TABLE X.

Business done in Missouri in 1905 by the life insurance companies authorized to transact business in the state in 1906:

	Policies issued in 1905.		Policies in force Dec. 31, 1905.	
Name of Company.	Number.	Amount.	Number.	Amount.
Aetna Life, Connecticut.	903	$ 1,964,233	4,694	$ 9,727,952
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
Totals.	184,776	$29,099,990	642,080	$90,872,045

5. This case is therefore plainly one where a large public interest is involved, and it is believed that it is the proper duty of the state to intervene, for which privilege it now prays.

STATE OF MISSOURI,

By Herbert S. Hadley,

Attorney General.

Supreme Court of the United States.

No. 258.—October Term, 1906.

Amanda S. Whitfield and The State of Missouri at the Relation of Herbert S. Hadley, Attorney General, Petitioners, *vs.* Aetna Life Insurance Company of Hartford, Connecticut.	On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[April 22d 1907.]

Mr. Justice Harlan delivered the opinion of the Court.

This is a suit upon an accident policy of insurance issued November 3d 1900, by the Aetna Life Insurance Company of Hartford, Connecticut, upon the life of James Whitfield, a resident of Missouri. The policy specifies various kinds of injuries; also, the amount that will be paid by the company on account of such injuries respectively. It provides: "If death results solely from such injuries within ninety days, the said Company will pay the principal sum of five thousand dollars to Amanda M. S. Whitfield, his wife, if living; and in event of the death of the said beneficiary before the death of the insured, to the executors, administrators, or assigns of the insured." The policy recites that it was issued and accepted by the assured, James Whitfield, subject to certain conditions, among which are these: . . 5. In event of death, loss of limb or sight, or disability due to injuries intentionally inflicted upon the insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries *intentionally inflicted upon the insured by himself; or due to suicide, sane or insane;* or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influence of intoxicants or narcotics, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be *one-tenth* the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding. . . 8. The maximum liability of the Company hereunder in any policy year shall not exceed the principal sum hereby insured, and in no event will claim for weekly indemnity be valid if claim is also made for any of the stated amounts herein provided for specified injuries based upon the same accident and resulting injuries."

The insured died April 7th 1902, the plaintiff, his widow and the beneficiary of the policy, alleging in her petition that he died "from bodily injuries, effected through external, violent, and accidental means, and by a pistol shot." The petition also states that the company after receiving proofs as to the death of the insured offered to pay $500 as the full amount due by section 5 of the policy, but refused to pay more. The plaintiff asked a judgment for $5,000 with interest from the date of the death of the insured.

The company, in its answer, denied liability for the whole principal sum and averred, among other things, that by the terms of the policy "in the event death is caused by intentional injuries inflicted by the insured or any other person, whether such person be sane or insane, or while fighting or in a riot, or by suicide, sane or insane, or by poison or by inhaling gas or vapor, or while under the influence of intoxicants or narcotics then the amount to be paid shall be *one-tenth* of the principal sum or $500; . . that said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose thereby of taking his own life; that the cause of the death of said Whitfield was suicide." It was not averred in the answer that the insured contemplated suicide when applying for a policy.

The plaintiff demurred to the answer. The demurrer was overruled, and the plaintiff filed a reply, admitting that the insured "died from bodily injuries caused by a pistol shot fired by himself and the cause of his death was suicide," but averring that the shot was fired and the suicide committed at a time when the insured was "incapable of realizing or knowing, and when he did not realize or know, what he was doing or the consequences of his act."

The case—a jury having been waived in writing—was tried by the court upon an agreed statement of facts, one of which was that the insured died "from bodily injuries caused by a pistol shot intentionally fired by himself, for the purpose of thereby taking his own life; that the cause of the death of said Whitfield was suicide."

The Circuit Court held that the plaintiff was not entitled to recover $5,000, but only $500, and judgment for the latter amount was entered. 125 *Fed. Rep.* 269. That judgment was affirmed by the Circuit Court of Appeals, 144 *Fed. Rep.* 356, and the case is here upon writ of certiorari.

When the policy in suit was issued and also when the insured committed suicide it was provided by the statutes of Missouri that "in all suits upon policies of insurances on life hereafter issued by any company doing business in this State, to a citizen of this State, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of

the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." *R. S. Mo.* 1879, § 5982; *Ib.* 1889, § 5855; *Ib.* 1899, § 7896.

Assuming—as upon the record we must do—that within the true meaning of both the statute and the policy, the insured committed suicide, without having contemplated self-destruction at the time he made application for insurance, the question arises whether the contract of insurance limiting the recovery to *one-tenth* of the principal sum specified was valid and enforcible.

1. That the statute is a legitimate exertion of power by the State cannot be successfully disputed. Indeed, the contrary is not asserted in this case, although it is suggested that the statute "seemingly encourages suicide and offers a bounty therefor, payable, not out of the public funds of the State, but out of the funds of insurance companies." There is some foundation for this suggestion in a former decision of this court, in which it was held that public policy, even in the absence of a prohibitory statute, forbade a recovery upon a life policy, silent as to suicide, where the insured, when in sound mind, wilfully and deliberately took his own life. *Ritter* v. *Mutual Life Insurance Co.*, 169 *U. S.* 139, 154. But the determination of the present case depends upon other considerations than those involved in the *Ritter* case. An insurance company is not bound to make a contract which is attended by the results indicated by the statute in question. If it does business at all in the State, it must do so subject to such valid regulations as the State may choose to adopt. Even if the statute in question could be fairly regarded by the court as inconsistent with public policy or sound morality, it cannot for that reason alone be disregarded; for, it is the province of the State, by its legislature, to adopt such a policy as it deems best, provided it does not, in so doing, come into conflict with the Constitution of the State or the Constitution of the United States. There is no such conflict here. The legislative will, within the limits stated, must be respected, if all that can be said is that, in the opinion of the court, the statute expressing that will is unwise from the standpoint of the public interests. See *Northwestern Life Ins. Co.* v. *Riggs*, 203 *U. S.* 243.

2. Did the courts below err in adjudging that the policy in suit was not forbidden by the statute? Can an insurance company and the insured lawfully stipulate that in the event of suicide, not contemplated by the insured when applying for a policy, the company shall not be bound to pay the principal sum insured but only a given part thereof? Will the statute in a case of suicide allow the company, when sued on its policy, to make a defense that will exempt it, simply *because of such suicide*, from liability for the principal sum?

We cannot agree with the learned courts below in their interpretation of the statute. The contract between the parties, evidenced by the policy, is, we think, an evasion of the statute and tends to defeat the objects for which it was enacted. In clear, emphatic words the statute declares that in *all* suits on policies of insurance on life it shall be *no* defense that the insured committed suicide, unless it be shown that he contemplated suicide when applying for the policy. Whatever tends to diminish the plaintiff's cause of action or to defeat recovery in whole or in part amounts in law to a defense. When the company denied its liability for the whole of the principal sum, it certainly made a defense as to all of that sum except one-tenth. If, notwithstanding the statute, an insurance company may, by contract, bind itself, in case of the suicide of the insured, to pay only one-tenth of the principal sum, may it not lawfully contract for exemption as to the whole sum or only a nominal part thereof, and if sued, defeat any action in which a recovery is sought for the entire amount insured? In this way the statute could be annulled or made useless for any practical purpose. Looking at the object of the statute, and giving effect to its words, according to their ordinary, natural meaning, the legislative intent was to cut up by the roots any defense, as to the whole and every part of the sum insured, which was grounded upon the fact of suicide. The manifest purpose of the statute was to make all inquiry as to suicide wholly immaterial, except where the insured contemplated suicide at the time he applied for his policy. Any contract inconsistent with the statute must be held void.

In *Berry* v. *Knights Templars' &c. Co.*, 46 *Fed. Rep.* 441, which was an action upon a policy of life insurance, it appears that the policy, among other things, provided that in the case of the self-destruction of the insured, whether voluntary or involuntary, sane *or insane*, the policy should be void. Judgment was given for the plaintiff. The Circuit Court said: "It is contended that the provision in the policy, declaring that it shall be void if the assured commits suicide, is a waiver or nullification of the statute which declares such a stipulation in a policy 'shall be void.' The statute is mandatory and obligatory alike on the insurance company and the assured. Its very object was to prohibit and annul such stipulations in policies, and it cannot be waived or abrogated by any form of contract or by any device whatever. The legislative will, when expressed in the peremptory terms of this statute, is paramount and absolute, and cannot be varied or waived by the private conventions of the parties." Upon writ of error to the Circuit Court of Appeals the judgment was affirmed, that court saying: "The company refused to pay the full amount named in the policy, claiming that by the express provisions of the policy self-destruction by the insured, whether sane or

insane, rendered the contract for the payment of $5,000 void, and the company was only bound to pay the amount which had been paid in assessments by the insured. This action was brought in the Circuit Court for the Western District of Missouri, to recover the full sum of $5,000. The case was tried to the court, a jury being waived. The parties stipulated that the company was liable for the full amount claimed by the plaintiffs, unless excused by the clause in the policy providing that the same should be void in case of suicide; . . Judgment in favor of the plaintiffs having been entered for the full amount of the policy, the case was brought to this court upon writ of error. . . In our judgment, the court below ruled correctly in holding that the policy sued on was a contract made in Missouri, and, as such, that the provisions of section 5982 [the same as the statute now in question] are applicable thereto; and therefore the judgment is affirmed, at costs of plaintiff in error." 50 *Fed. Rep.* 511, 512, 515.

In *Knights Templars' Indemnity Co.* v. *Jarman*, 187 *U. S.* 197, this court had occasion to consider the scope and effect of the statute here in question. That was an action upon a policy of life insurance for $5,000. A recovery for the whole sum was sought, but the company defended the action upon the ground that the provision in the statute that it should be no defense that the insured committed suicide, related only to cases where he took his own life voluntarily, while sane, and in full possession of his mental faculties; that the provision in the policy that "'in case of the self-destruction of the holder of this policy, whether voluntary or involuntary, sane or *insane*, . . this policy shall become null and void,' applied, and exonerated the company from all liability beyond that provided in the policy, 'that in the case of the suicide of the holder of this policy, then this company will pay to his widow and heirs or devisees such an amount of his policy as the member shall have paid to this company on the policy in assessments on the same without interest.'" This view of the statute was not accepted in the Circuit Court, and there was judgment against the company for the whole sum insured. That judgment was affirmed here upon certiorari to the Circuit Court of Appeals.

A leading case on the general subject is *Logan* v. *Fidelity & Casualty Company*, 146 *Mo.* 114, 119, 122–3, which was a suit upon a policy which, according to the answer in the case, contained stipulations and covenants to the effect that in the event of fatal injuries to the assured wantonly inflicted upon himself, or inflicted upon himself while insane, the company's liability under its policy should be a sum equal to the premiums paid, and that sum the policy provided should be in full liquidation of all claims under it. The question before the court was whether or not the statute here in question applied to such a policy as the one there in suit. The

trial court instructed the jury to return a verdict for the full amount of the policy with interest. The court said: "The error into which respondent has fallen is in assuming that section 5855 [the statute now in question] was intended to affect a particular line, class or department of insurance, as the same has been classified for legislation. The real object of the section, as the clear terms of its language express, is to affect *all policies of insurance on life* from whatever class, department or line of insurance the policy may be issued or by whatever name or designation the company may be known. It is policies of a given kind, and not companies of a class, that are to be affected by the provisions of section 5855. The section was enacted clearly to protect all policy holders *of insurance on life* against the defense that the insured committed suicide, all provisions in the policies to the contrary notwithstanding, unless as provided in the section, it can be shown that the insured contemplated suicide at the time he made application for the policy. . . When a policy covers loss of life from external, violent and accidental means alone, why is it not insurance on life? Such a provision incorporated in a general life insurance policy admittedly would be insurance on life, then why less insurance on life because not coupled with provisions covering loss of life from usual or natural causes as well? If one holds a general life policy and an accident policy, and is killed by lightning or commits suicide, so that he may be said to have died by accidental means, both the companies should pay, and the stipulation against liability in the event of suicide in the policies should be no more a defense against the suit upon the accident policy, providing against death from accidental cause, than against the policy which goes further and covers death from other causes as well. No such exception or exemption is found in the plain and comprehensive language of section 5855. . . No rule of construction, short of one applied for distortion and destruction, can relieve accident insurance companies, issuing policies of insurance on life in this State, from the operation and influences of section 5855, which in plain and unambiguous terms declares that in all suits upon policies of insurance on life thereafter issued, it shall be no defense that the assured committed suicide, unless it shall have been shown to the satisfaction of the court or judge trying the cause that the insured contemplated suicide at the time of making his application for the policies, all stipulations in the policy to the contrary being void."

In *Keller* v. *Travelers Insurance Company*, decided by the St. Louis Court of Appeals, 58 *Mo. App.* 557, 560–1, we have a decision very much in point. That was an action on an insurance policy for $2,500. The company defended upon the ground that by the terms of the policy if the insured died of suicide, whether the act be voluntary or involuntary, should be liable for the then full net value of said policy per the American Experience

Table of Mortality and four and one-half per cent interest and no more, and that the same should be paid in manner and form as provided in the policy for the payment thereof in the event of death. The defense was that the ~~defendant~~ committed suicide and that the full net value of the policy, according to the contract, was only $814.50, and no more. The defense was overruled and judgment given for the principal sum. That judgment was affirmed in the Court of Appeals, the court saying: "The plain purpose of the statute *supra* was to prevent the insertion in policies of life insurance of exceptions to liability on the ground of the suicide of the insured, unless it could be proven 'that the insured contemplated suicide at the time he made the application for the policy.' This was in effect a legislative declaration of the public policy of this state. That it was intended to limit the power to contract for a lesser liability in cases of death by suicide, not within the limitation expressed in the statute, is also apparent from its terms, to wit: 'and any stipulation to the contrary shall be void.' . . The fact that the premium warranted and the policy guaranteed full insurance in case of the death of the insured for any cause not specified in the clause set up in the defendant's answer demonstrates that said clause was designed to modify the liability of the insurance company if the ~~defendant~~ committed suicide. It necessarily follows, if this stipulation as to a decreased liability in the event of death by suicide is enforced, that it is *some* defense to the otherwise full liability agreed upon in the policy. As the statute in question declares that suicide, not committed as therein set forth, is '*no defense*,' we can not hold that the present stipulation can be enforced without violating the plain terms of a mandatory statute which the parties have no power to alter or abrogate."

Without further discussion, we adjudge that, under the statute in question, anything to the contrary in the policy issued by the insurance company where liability upon a life policy is denied simply because of the suicide of the insured, the beneficiary of the policy can recover the whole of the principal sum, unless it be shown that the insured, at the time of his application for the policy, contemplated suicide. The judgment must, therefore, be reversed and the case remanded for further proceedings in conformity with this opinion and consistent with law.

It is so ordered.

True copy.

Test:

Notwithstanding *Clerk Supreme Court, U. S.*

END OF CASE